

Thomas Holt

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SEA STAR LINE, LLC, A LIMITED :  
LIABILITY COMPANY, :  
 : Civil Action No.  
Plaintiff/ :  
Counterclaim Defendant, : 05-CV-245-JJF (LPS)  
 :  
vs. :  
 :  
EMERALD EQUIPMENT LEASING, :  
INC., a corporation, :  
 :  
Defendant/ :  
Counterclaim Plaintiff. :

Deposition of THOMAS HOLT, SR.  
taken at Eckert Seamans Cherin & Mellott, LLC  
Two Liberty Place, 50 South 16th Street, 22nd Floor  
Philadelphia, Pennsylvania 19102  
Tuesday, February 12 2008  
9:45 a.m.

Gail L. Inghram Verbano, CSR, RMR, CLR  
302.449.0529

DepositionsDelaware LLC  
www.DeposDE.com

A-987

Thomas Holt

2 (Pages 2 to 5)

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A P P E A R A N C E S

On behalf of Sea Star Line:

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On behalf of Emerald Equipment Leasing, Inc.:

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ECKERT SEAMANS CHERIN & MELLOTT, LLC  
Two Liberty Place  
50 South 16th Street, 22nd Floor  
Philadelphia, Pennsylvania 19102  
215.851.8450

ALSO PRESENT:

Andrew Rooks

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10 Spreadsheets of invoices 112

11 Spreadsheets of invoices with 113  
attached email from setox@aol to  
Mr. Rooks dated 10-26-07

(The original exhibits were returned to Ms. Kathleen Miller; digital copies were provided to all counsel.)

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1 THOMAS HOLT, SR., having first been duly  
2 sworn according to law, was examined and testified as  
3 follows:  
4

- - -  
EXAMINATION

6 BY MR. ARMSTRONG:

7 Q Please state your full name.

8 A Thomas J. Holt, Sr.

9 Q Mr. Holt, what is your business address?

10 A My business address? Well, I guess for  
11 the want of a better one, we'll use my home address.

12 Q And your home address is the same as it  
13 was when you were deposed before?

14 A Yes, sir.

15 Q Are you employed?

16 A No, sir.

17 Q Do you hold positions with any companies?

18 A Emerald Leasing.

19 Q What is your position with Emerald  
20 Leasing?

21 A President.

22 Q Have you remained president since you  
23 bought out the other people in 2000 or so?

24 A Yes, sir.

Thomas Holt

3 (Pages 6 to 9)

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1 **Q Are there any employees of Emerald**  
2 **Equipment Leasing?**

3 A No, sir.

4 **Q Have there been any employees of Emerald**  
5 **Equipment Leasing during the past three years?**

6 A Using the term "employees," I have no  
7 employees. I do hire people from time to time to do  
8 work for me.

9 **Q Those -- would you call those people**  
10 **independent contractors?**

11 A For want of a better word, yes.

12 **Q Or contractors?**

13 A Yes.

14 **Q All right. Whom have you hired in the**  
15 **past three years to do work for Emerald Equipment**  
16 **Leasing?**

17 A Immediately, Lorraine Robins comes to  
18 mind. Art Davis; John Evans; his wife, Mrs. Evans.  
19 I can't remember the name of the gentleman down in  
20 Puerto Rico, but that was three years ago, I guess --  
21 two to three years ago. And from time to time  
22 various people do help me.

23 **Q When did you hire Lorraine Robins?**

24 A When did I hire her?

1 A No, sir.

2 **Q What work did Ms. Robins do with Emerald**  
3 **Equipment Leasing or for Emerald Equipment Leasing?**

4 A Well, the same as the other people: They  
5 attempted to find out where all the equipment was,  
6 attempted to offer for sale to the marketplace;  
7 continued to put together the correlation of  
8 information that we were receiving from Sea Star,  
9 MBC Bank and other entities to determine the proper  
10 value of equipment to be sold; the proper value of  
11 the rents that Sea Star was reporting under their  
12 self-billing report.

13 **Q During what period of time was Arthur**  
14 **Davis a contractor for Emerald Equipment Leasing?**

15 A The same as Lorraine.

16 **Q Does he still do work for Emerald?**

17 A Indirectly, yes.

18 **Q When you say "indirectly," what work does**  
19 **he do?**

20 A Well, when he's available, he attempts to  
21 find out if there's any equipment that has not been  
22 turned back; if possible, to sell equipment that was  
23 never turned back if it's found on the world market.  
24 He talks to me about various other entities that he

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Page 9

1 **Q To do work for Emerald Equipment Leasing**  
2 **or retain her to do work for Emerald Equipment**  
3 **Leasing.**

4 MR. MOLDOFF: Object to the form of the  
5 question.

6 THE WITNESS: Lorraine, in her career,  
7 has worked for me for several years, 45 or more. The  
8 immediate period of the time frame would be about '02  
9 to maybe through to '03, '4; and that's when Emerald  
10 had her working for them.

11 BY MR. ARMSTRONG:

12 **Q Does Lorraine Robins still do work for**  
13 **Emerald Equipment Leasing?**

14 A She does for her company, Storage  
15 Transfer.

16 **Q While she was doing work for Emerald**  
17 **Equipment Leasing, was she paid?**

18 A No.

19 **Q Was there an agreement as to payment made**  
20 **with her?**

21 A There is an agreement to pay her and  
22 other people at the hopefully successful conclusion  
23 of this litigation.

24 **Q Is that agreement in writing?**

1 may think there's opportunities of employment for.

2 **Q You mentioned that Ms. Robins and**  
3 **Mr. Davis gathered information from Sea Star,**  
4 **MBC Bank and other entities.**

5 **Do you know what those other entities are**  
6 **or were?**

7 A Trucking companies, railroad entities  
8 that would have possession of the equipment that Sea  
9 Star abandoned throughout the trade lanes in the  
10 United States.

11 **Q That Sea Star abandoned?**

12 A Yes, sir.

13 **Q When did you learn that Sea Star had**  
14 **abandoned equipment?**

15 A When they never returned the equipment  
16 that was under lease to them.

17 **Q When did you learn that?**

18 A When did I learn that?

19 **Q Yes.**

20 A Time frame?

21 **Q Yes, sir.**

22 A Let's see. This is '08. I would tell  
23 you right up until today. Predominantly in '03 and  
24 '04, but certainly up to today. As you're aware,

Thomas Holt

4 (Pages 10 to 13)

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1 there's several hundred pieces of equipment missing  
2 that you never returned.

3 **Q I take it that you're using the royal**  
4 **"you"?**

5 A As always, I look at counsel as Sea Star.

6 **Q Thank you.**

7 **What arrangement was there or is there to**  
8 **compensate Arthur Davis?**

9 A The same answer as Lorraine.

10 **Q What work has John Evans done as a**  
11 **contractor?**

12 A He, as an attorney, assisted Lorraine and  
13 Arthur in the correlation and discovery of documents  
14 from Sea Star and other entities and advice to me.

15 **Q During what period of time was John Evans**  
16 **a contractor for Emerald Equipment?**

17 A For Emerald Equipment? Probably sometime  
18 in '06 that ended.

19 **Q Do you recall when it started?**

20 A It would have started probably about '02,  
21 '03, best guesstimate.

22 **Q What agreement for compensation does**  
23 **Emerald or has Emerald had with John Evans?**

24 A Emerald was paying Mr. Evans; and it got

1 A I'm sorry.

2 **Q No, I'm sorry. I cut you off.**

3 A Go ahead.

4 **Q Was there an arrangement to compensate**  
5 **her?**

6 A Yes, sir.

7 **Q And what was that arrangement?**

8 A Again, it was paid on a weekly basis, and  
9 I feel it was -- the rate was per diem. It might  
10 have been by the hour, but -- it was what it was.

11 **Q Was Emerald Equipment Leasing making the**  
12 **payments to Mr. Evans and Mrs. Evans?**

13 A Was Emerald Equipment Leasing making  
14 payments to them?

15 **Q Making the payments.**

16 A Are you talking about payroll? What kind  
17 of --

18 **Q Talking about writing checks, that sort**  
19 **of thing.**

20 A Payments for services they rendered?

21 **Q Yes.**

22 A Emerald was paying them, yes.

23 **Q Do you recall the names of the other**  
24 **people?**

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Page 13

1 to a point in time where it couldn't pay him anymore  
2 so we parted company. Ran out of money.

3 **Q How was Mr. Evans being paid? Was it by**  
4 **the hour or a salary?**

5 A I think it was more weekly, if I  
6 remember.

7 **Q Was it a salary arrangement or an hourly**  
8 **arrangement?**

9 A No, I believe it was more weekly, not  
10 hourly. Might have been per diem.

11 **Q Was there a written contract?**

12 A No, sir.

13 **Q And what work did Mrs. Evans do for**  
14 **Emerald?**

15 A Assisted in the correlation of all the  
16 documents.

17 **Q Over what period of time did she do that**  
18 **work?**

19 A Best guess for Emerald would have been  
20 probably '05.

21 **Q During the year '05? No work prior, no**  
22 **work afterwards?**

23 A I don't think so.

24 **Q Was there an arrangement --**

1 A No, not off the top of my head.

2 **Q You recall Marty McDonald?**

3 A Okay. Thank you for reminding me. But  
4 Marty was more in '03 and '04, I think. But thank  
5 you for reminding me.

6 **Q You're welcome.**

7 **Was he working for Emerald at that time?**

8 A Yes.

9 **Q Was he being paid by Emerald?**

10 A Yes, sir.

11 **Q What were his responsibilities?**

12 A His responsibilities was to assist Arthur  
13 and Lorraine in trying to find Emerald's equipment,  
14 more towards Jacksonville and Puerto Rico; and trying  
15 to recover the equipment; and also to assist in  
16 whatever paperwork was required.

17 **Q Does Marty McDonald still do any work for**  
18 **Emerald?**

19 A No, sir.

20 **Q Do you recall a Francisco or Frankie**  
21 **Gonzalez?**

22 A I remember the name Frankie. He was in  
23 Puerto Rico -- or was he in Jacksonville?

24 **Q He was in Puerto Rico.**

Thomas Holt

5 (Pages 14 to 17)

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1 A Okay.

2 **Q Was he working for Emerald?**

3 A He was working for Emerald.

4 **Q Over what period of time?**

5 A Probably the same time frame. From -- I  
6 want to say '02, but I think it was probably later  
7 part of that, maybe '03 and '04. Maybe '03, because  
8 Storage Transfer came into existence back in those  
9 days.

10 **Q What were his responsibilities?**

11 A To find the equipment that was scattered  
12 all over.

13 **Q How was he paid?**

14 A He was paid by Emerald.

15 **Q By check?**

16 A Jeez. I don't know if it was check,  
17 cash, wire transfer. You're going to '03? '02? Six  
18 years ago. He was paid. He wasn't doing it for  
19 free.

20 **Q Do you recall the name Joe Maqueda?**

21 A I recall the name. My mind says he was  
22 some sort of salesperson or in the leasing business.

23 **Q Was he working for Emerald?**

24 A He would probably have been working

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1 through Art Davis or Lorraine for Emerald selling  
2 equipment. That's how I would seem to remember. I  
3 don't know if he was an actual employee.

4 **Q Do you know whether he was paid by  
5 Emerald?**

6 A Yes; if he worked for Emerald, he  
7 certainly would have been paid. If he was a  
8 salesperson for Emerald, he would have been paid a  
9 commission, I would assume. Or if he just bought  
10 equipment from Emerald, that was that story.

11 **Q Who was responsible for actually making  
12 the payments to these contractors on behalf of  
13 Emerald?**

14 A Myself in a great degree, and Lorraine or  
15 Art.

16 **Q Did you actually write Emerald checks?**

17 A I don't think I ever wrote a check in my  
18 life. I always had my people write the checks.

19 **Q Well, who was or were the Emerald people  
20 that wrote the checks to these contractors, if there  
21 were checks?**

22 A That time frame?

23 **Q Yes, sir.**

24 A If it was checks, it would have been

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1 Lorraine; and it could have been wire transfers, as I  
2 said earlier.

3 **Q Would Lorraine have been responsible for  
4 arranging the wire transfers?**

5 A Yes.

6 MR. ARMSTRONG: Let me show you a copy of  
7 a renote of taking deposition that I'll ask the  
8 court reporter to mark as Exhibit 1 for  
9 identification.

10 Counsel, before we start, do you want to  
11 mark this as Emerald Exhibit 1 or -- do you have any  
12 preference?

13 MR. MOLDOFF: That's fine. I'm sure we  
14 probably used that designation before.

15 (Discussion off the record.)

16 (E.E.L. Exhibit 1 was marked for  
17 identification.)

18 BY MR. ARMSTRONG:

19 **Q Have you seen that document before?**

20 A This document I saw today. I had the  
21 other document that you were going to do back in  
22 January. I would think they're one and the same. I  
23 don't know. You would know.

24 **Q I will say to you that Exhibit A should**

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1 **be the same on both. The original in January was a  
2 notice; this is a renote. But the Exhibit A's  
3 attached should be the same.**

4 **So look at Exhibit A. Have you seen that  
5 before?**

6 A This document here that says "Exhibit A"?

7 **Q Yes.**

8 A Yes. I seen it from your prior  
9 deposition notice.

10 **Q And have you reviewed it?**

11 A I read it.

12 **Q Are you here to testify as the corporate  
13 representative of Emerald Equipment Leasing, Inc., as  
14 to all items in Exhibit A?**

15 A To the best of my ability.

16 **Q Are there any other individuals who will  
17 testify as corporate representatives of Emerald as to  
18 any of the items specified on Exhibit A?**

19 A I am the only corporate representative of  
20 Emerald.

21 MR. MOLDOFF: Well, that's actually --  
22 you mean that's actually the official --

23 THE WITNESS: President.

24 MR. MOLDOFF: -- officer?



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6 (Pages 18 to 21)

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1 THE WITNESS: Yes.

2 MR. MOLDOFF: Of the company.

3 THE WITNESS: That's how I took his  
4 question.

5 MR. MOLDOFF: He's here to answer the  
6 questions -- I believe that he can testify to these  
7 various areas. And as he said, he'll do the best he  
8 can.

9 BY MR. ARMSTRONG:

10 Q Did you bring any documents with you?

11 A Documents of -- like this?

12 Q Any papers. The renotice states, "The  
13 said deponent is to bring the following: All  
14 documents responsive to Sea Star Line, LLC's Request  
15 for Production of Documents dated December 19th,  
16 2006."

17 MR. MOLDOFF: I could just -- I discussed  
18 that with Mr. Holt briefly today.

19 The prior notice that we had did not have  
20 that same designation. I just noticed it myself just  
21 recently and just mentioned it to Mr. Holt.

22 Obviously, I think as you know,  
23 Mr. Armstrong, all of those documents, which are  
24 quite voluminous, we have supplied and Sea Star has.

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1 So we could not possibly produce, and I don't think  
2 there was any requirement for us to re-produce, all  
3 the documents that we've already produced. So we  
4 don't have any documents here.

5 MR. ARMSTRONG: So that we're clear, your  
6 position is that you have produced all of the  
7 documents and that there will be no additional  
8 documents produced today?

9 MR. MOLDOFF: I produced all the  
10 documents. Without further review, do I know that  
11 there are no possible other documents? I can't say  
12 that specifically. If there are, we will produce  
13 them.

14 But the best of our knowledge right now,  
15 we believe that we have produced whatever we had that  
16 was responsive to the Request for Production of  
17 Documents. Also, given our objections and other  
18 responses that we've filed in connection with the  
19 request.

20 BY MR. ARMSTRONG:

21 Q Mr. Holt, how did Emerald determine the  
22 specific locations of the Emerald equipment involved  
23 in Emerald's claims at the inception of the lease  
24 between Emerald and Sea Star, as alleged in

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1 Paragraph 12 of the Amended Counterclaim?

2 MR. MOLDOFF: Object to the form of the  
3 question.

4 THE WITNESS: Paragraph 1?

5 BY MR. ARMSTRONG:

6 Q No. Look at Paragraph -- look at  
7 Paragraph 2 of the Exhibit A.

8 A Didn't you just say Paragraph 12?

9 Q I said Paragraph 12 of the Amended  
10 Counterclaim.

11 A What would you like me to look at,  
12 Paragraph 2 of this document, Exhibit A?

13 Q Yes.

14 A Thank you.

15 Q In Paragraph 12 of the Amended  
16 Counterclaim, it is stated, "At the inception of the  
17 lease between Emerald and Sea Star, the Emerald  
18 equipment was not in Emerald's possession. Instead,  
19 all of the equipment was, inter alia, in terminals in  
20 the possession of shippers at inland depots or on  
21 board NPR vessels purchased by Sea Star."

22 How did Emerald determine the specific  
23 locations of this equipment at the inception of the  
24 lease between Emerald and Sea Star?

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1 MR. MOLDOFF: Object to the form of the  
2 question.

3 THE WITNESS: Emerald determined it  
4 through the inventory controls of NPR, who had leased  
5 all of Emerald's equipment for years; and the  
6 continual inventory control systems that were coming  
7 from NPR, Inc., in conjunction with Sea Star.

8 Sea Star took over the inventory controls  
9 of NPR under NPR's 3900 computer, and they maintained  
10 that inventory for a period of time.

11 BY MR. ARMSTRONG:

12 Q For what period of time did Sea Star  
13 maintain that inventory?

14 A Well, this document was in Madison,  
15 New Jersey. And I want to tell you it was, to my  
16 best guesstimate -- because I wasn't involved, in  
17 fact, at that point in time, as you know -- it could  
18 have been for a period of three months. Certainly  
19 not less than one month. Somewhere in that time  
20 frame.

21 Q Were you ever involved in the inventory  
22 controls of NPR?

23 A Yes.

24 Q And over what period of time were you

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7 (Pages 22 to 25)

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1 involved in the inventory controls of NPR?

2 A Well, as its chief executive officer and  
3 owner of the company, the period of time that I owned  
4 it.

5 Q What period of time was that?

6 A I bought the company in '07; and it was  
7 liquidated -- at least I was let out in '02.

8 Q Did you buy the company in '97?

9 A Yes, sir.

10 Q And you owned the company until the  
11 company -- that is, NPR -- was liquidated in 2002?

12 A I owned the company until a trustee  
13 replaced me in '02, March of '02. The company was in  
14 bankruptcy.

15 You will find voluminous testimony on  
16 this that I gave you two years ago.

17 Q So I'm moving on.

18 But my question in regard to the  
19 inventory controls is, what was your specific  
20 involvement during that period of time?

21 A Did I run the computer? No. Did I know  
22 that the inventories were taken on a daily basis?  
23 Yes. Submitted daily to all terminals of NPR,  
24 including the home office, where I was.

Page 23

1 Q And did you ever review those  
2 inventories?

3 A Yes.

4 Q Who, on behalf of Emerald, reviewed the  
5 inventories?

6 MR. MOLDOFF: Object to the form of the  
7 question.

8 THE WITNESS: Well, on behalf of  
9 Emerald -- wearing the same hat as the owner of  
10 Emerald in those days -- I was not as interested in  
11 the daily inventories of Emerald because Emerald did  
12 not truly have one. It was NPR's inventory for  
13 Emerald, because it was under a total lease. It was  
14 not what you would call a specific unit per-diem  
15 lease that was entered into with Sea Star and  
16 Emerald.

17 If that can help you, fine. That's the  
18 way I saw it.

19 BY MR. ARMSTRONG:

20 Q In April 2002, there were NPR inventories  
21 continuing; correct?

22 A That's right, on behalf of Emerald.

23 Q And before the Court authorized the asset  
24 purchase by Sea Star from NPR, did Emerald make any

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1 determination that the inventories of NPR -- that is,  
2 the equipment inventories -- were correct?

3 A That day? No. Did we know them to be  
4 correct? As best as NPR's ability and Emerald's, to  
5 know where the equipment was, the condition of the  
6 equipment and who was using it.

7 The asset sale of NPR did not include  
8 Emerald equipment.

9 Q Would it be fair to say that insofar as  
10 Emerald was concerned, the NPR inventories as to  
11 types and locations of equipment were correct in --  
12 say as of April 25th, 2002?

13 A We knew them to be correct, because they  
14 were doing, prior to April 25th -- or when was the  
15 sale? April 26th?

16 Q The order was entered April 26th; the  
17 sale closed on April 27th.

18 A Well, what I'm trying to tell you is that  
19 we knew them to be correct, because it was doing the  
20 mission statement of NPR and handling all the cargo  
21 requirements of NPR, and we had reports from all the  
22 terminals on what equipment was available and not  
23 available, as NPR.

24 So Emerald relied upon that, because it

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1 was a gross lease, not a per-diem lease, as we  
2 talked.

3 Q All right. Now, when you say "all the  
4 terminals," were there terminals other than NPR  
5 terminals involved in that inventory?

6 A Well, we had equipment that you took  
7 possession of in railroad yards, intermodal yards and  
8 trucking company yards. We had equipment under load.  
9 We had equipment waiting to be loaded throughout the  
10 country. We maintained depots in all those places.  
11 That was all there, covered under the NPR inventory  
12 controls.

13 Q The inventory controls covered equipment  
14 terminals, inland depots, yards in the continental  
15 United States?

16 A To be very specific what terminals, I  
17 couldn't tell you. Did it show where the equipment  
18 was? Yes.

19 Q It showed equipment in Puerto Rico;  
20 correct?

21 A Yes.

22 Q Showed equipment in the Dominican  
23 Republic?

24 A Yes.

Thomas Holt

8 (Pages 26 to 29)

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1 **Q Was the terminal in Puerto Rico reporting**  
2 **as to locations of equipment to NPR or to someone**  
3 **else on behalf of NPR?**

4 MR. MOLDOFF: Object to the form of the  
5 question.

6 THE WITNESS: The inventory controls  
7 would have had to come, plus or minus, every day from  
8 the various terminals back to the mainframe computer  
9 in Madison so that the marketing department would  
10 know what equipment was where, for the availability  
11 for -- first, to deliver cargo to the consignees; and  
12 second, to have equipment available for shippers  
13 throughout the territory you speak of.

14 BY MR. ARMSTRONG:

15 **Q What was the procedure in the Dominican**  
16 **Republic?**

17 MR. MOLDOFF: Object to the form of the  
18 question.

19 BY MR. ARMSTRONG:

20 **Q With respect to reporting.**

21 A The best I could tell you is that, if I  
22 can recall in those days, the Dominican Republic was  
23 reporting directly to the mainframe in Madison.

24 Now, did it go through Puerto Rico to get

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1 you that I was the person authorizing Emerald to  
2 enter into these self-billing reports between MBC,  
3 Sea Star and Emerald.

4 Now, to answer your question: Yes.

5 **Q When did you become aware that Sea Star**  
6 **self-billing reports were inaccurate?**

7 A Oh, it had to be the latter part of '02.

8 **Q How did you become aware that Sea Star's**  
9 **billing reports were inaccurate?**

10 A It was an accumulation of information  
11 that came into Emerald's office from your  
12 self-billing reports and from other marine terminals,  
13 truckers, railroad yards, et cetera. And primarily  
14 from your own documents, as we started to see a  
15 pattern of equipment not being accounted for.

16 **Q When did Emerald start to see the pattern**  
17 **of equipment not being accounted for?**

18 A I would tell you that once we started  
19 receiving your documents -- and I'm going to put a  
20 time frame on it -- could be wrong -- sometime in the  
21 fall of '02, maybe September/October.

22 **Q How did you personally learn that the Sea**  
23 **Star self-billing reports were inaccurate?**

24 A I reviewed them after they were corrected

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1 there? It could have. But certainly they knew what  
2 equipment was where.

3 **Q Did Emerald ever audit the equipment**  
4 **inventories reported by NPR?**

5 A Well, it was -- in the possession of NPR?

6 **Q Yes, sir.**

7 A No. As I told you, it was a grossed-up  
8 lease.

9 **Q What is a grossed-up lease?**

10 A It's a lease that NPR and Emerald entered  
11 into where the total fleet of Emerald would be leased  
12 by NPR for a period of time.

13 **Q Did you have any communications with Sea**  
14 **Star representatives concerning self-billing reports?**

15 A No. We talked in generalities to that.  
16 That was concluded between parties other than I.

17 **Q And who were those parties?**

18 A Well, my best guess right now -- and I  
19 can't tell you definitely -- was the Sea Star people,  
20 hopefully, because they prepared them: Art Davis,  
21 Lorraine, MBC Bank.

22 **Q Did you ever become aware that**  
23 **self-billing reports by Sea Star were inaccurate?**

24 A To answer that question, I should tell

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1 by Lorraine and Arthur.

2 It was nothing that comes as any surprise  
3 to the Sea Star people. We were complaining bitterly  
4 about it.

5 **Q And when did Emerald start complaining**  
6 **bitterly about the self-billing reports?**

7 A Once we started to see how you were  
8 underpaying.

9 **Q When was that? Was that in --**

10 A That was -- it could have been --

11 **Q Summer? fall?**

12 A It could have -- well, I'm telling you  
13 when I got involved.

14 **Q Okay.**

15 A It could have been sometime in August,  
16 July, June of '02, right from the get-go.

17 **Q Did you retain Lorraine Robins as a**  
18 **contractor before you determined that the -- or**  
19 **learned that the Sea Star self-billing reports were**  
20 **inaccurate?**

21 A Before or after? I retained her from  
22 when Emerald needed someone to cover their office  
23 activities. I retained her and Arthur. And it would  
24 have been probably immediately -- I don't know -- in



Thomas Holt

9 (Pages 30 to 33)

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1 July or August of that year.

2 **Q July or August of 2002?**

3 A '02. '02, yeah.

4 Now, that's six years ago, so -- five and  
5 a half years ago, so I believe that's the time frame.

6 **Q When you learned that the Sea Star**  
7 **self-billing reports were inaccurate, what action did**  
8 **you take?**

9 A Well, I instructed them to communicate,  
10 in every instance, back to the Sea Star people. To  
11 correct the invoices, send them back to the Sea Star  
12 people. I started talking to people at Sea Star --  
13 specifically, Bob McGee.

14 **Q Do you know whether Mr. Davis and**  
15 **Ms. Robins followed your instructions?**

16 A Only the facts that bring us here today,  
17 yes. Yes, they did follow them.

18 **Q When did you talk to Bob McGee about the**  
19 **self-billing reports?**

20 A You mean the understating of them?

21 **Q Yes.**

22 MR. MOLDOFF: If you recall. Again,  
23 don't speculate.

24 THE WITNESS: I don't have ability to

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1 A In the instance of equipment under load  
2 somewhere and not shown on the self-billing report.  
3 That really became very evident in '03.

4 The instance of equipment being reported,  
5 but underreported, started, as I said to you, to show  
6 up, in our minds, through the end of '02.

7 And finally, to finish your -- you go  
8 next. I'll wait for you.

9 **Q No, go ahead.**

10 A No.

11 **Q Go with the "finally."**

12 A No, please, you first.

13 MR. MOLDOFF: Ask another question,  
14 please.

15 THE WITNESS: You invited me. I'll wait  
16 for you.

17 BY MR. ARMSTRONG:

18 **Q Well, thank you.**

19 **As you were saying, "and finally."**

20 A That would not be an answer to a question  
21 that you might give me. Please give me a question,  
22 and I'll answer it.

23 **Q Yes, sir. I'll be happy to.**

24 **When you say you weren't paying the per**

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1 tell you what day I called him on the phone. But it  
2 probably was to closer to September/October.

3 BY MR. ARMSTRONG:

4 **Q 2002?**

5 A Yes. Had meetings with the man in  
6 that -- towards the end of the year.

7 **Q Was the problem ever resolved?**

8 A No, sir.

9 **Q Did you have any communications with**  
10 **anyone from MBC Bank regarding the self-billing**  
11 **reports or MBC leasing?**

12 A Well, back in those days, my contact with  
13 the bank was Scott Krieger. And I just said to him,  
14 As far as I'm concerned, you weren't paying the right  
15 rates -- not the rates, the right per diems. The  
16 rates were always proper under the schedule of rates  
17 in the Sea Star/Emerald lease, but it was the amount  
18 of per diems.

19 In many cases, it was a mistake by your  
20 billing people. Many cases you could see there was a  
21 pattern over the time frame of several months that  
22 equipment was not being reported.

23 **Q In what types of cases, if you can say,**  
24 **was the pattern evident?**

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1 **diem, you were referring to Sea Star not paying the**  
2 **per diem; correct? Not MBC?**

3 A MBC was the people that had the loan on  
4 the equipment. It was the documents that Sea Star  
5 was providing Emerald and MBC, known as your  
6 self-billing reports.

7 **Q And those self-billing reports dealt with**  
8 **per-diem payments; correct?**

9 A They dealt with two things: They dealt  
10 with per-diem payments, the rate; and they dealt with  
11 the amount of days; and a third thing would have been  
12 possession. That would have shown possession.

13 **Q You were aware, were you not, that Sea**  
14 **Star was storing equipment?**

15 A For whose benefit? Sea Star's or  
16 somebody else's?

17 **Q For MBC.**

18 A That they were physically storing  
19 equipment for MBC?

20 **Q Yes.**

21 A Under the Emerald lease?

22 **Q Under the --**

23 A Or is that a separate transaction between  
24 Sea Star and MBC?

Thomas Holt

10 (Pages 34 to 37)

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1 **Q Well, under the Court's order on the**  
2 **asset sale for --**

3 A No, I'm sorry. The -- the negotiation  
4 between MBC and Sea Star I was not privy to.

5 MR. MOLDOFF: I -- just object to the  
6 question. I'm not sure under what area of testimony  
7 that you have on Exhibit A. Are we -- are you  
8 referring to -- when you're talking about storage, I  
9 don't see that as any of the particular areas that  
10 you designated.

11 MR. ARMSTRONG: Well, I'm referring to  
12 this.

13 BY MR. ARMSTRONG:

14 **Q What do you mean when you say**  
15 **"possession"?**

16 A Possession of what? Equipment?

17 **Q Equipment; yes, sir.**

18 A In whose possession?

19 **Q In Sea Star's possession.**

20 A Means you had Emerald's equipment under  
21 lease between Sea Star and Emerald. I never knew  
22 your agreement with MBC. I wasn't privy to it.

23 **Q So --**

24 A I only know, by third party, that you

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1 A I was never aware that you were an agent  
2 for MBC to sell my equipment.

3 **Q Did you ever become aware that equipment**  
4 **in the possession of Sea Star was in storage for sale**  
5 **by MBC or Emerald, not by Sea Star?**

6 A I answered that question. Your dealings  
7 with MBC were directly between the two of you. We  
8 never authorized MBC to place our equipment in  
9 storage anywhere. We didn't have to. Our equipment  
10 was actively in your possession or in our possession  
11 being sold.

12 **Q When it was in your possession, was it**  
13 **ever located at a Sea Star terminal?**

14 A It was equipment that Emerald had in a  
15 facility -- which was your marine terminal in  
16 Puerto Rico -- totally isolated, totally there to be  
17 sold for Emerald.

18 **Q Did Emerald ever bill Sea Star for any of**  
19 **that equipment?**

20 A Yes, sir.

21 **Q And what was the reason Emerald billed**  
22 **Sea Star for that equipment?**

23 A Because you took possession of it and  
24 moved cargo on it.

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1 bought some equipment from MBC; and my loan was  
2 credited with that amount of money.

3 **Q In your analysis of the self-billing**  
4 **reports --**

5 A Yes, sir.

6 **Q -- did you differentiate between Sea**  
7 **Star's possession of the equipment for use and Sea**  
8 **Star's possession of the equipment for storage?**

9 A We differentiated -- if that is the right  
10 word, we -- better to say you were invoiced where  
11 your invoices were corrected for only the equipment  
12 that was in your possession.

13 Now, if you wanted to store it -- like  
14 many times in the invoices you would leave equipment  
15 at a depot in Seattle, Washington, or Cincinnati or  
16 Timbuktu. That would be up to you. We were not in  
17 the storage business; we were in the selling of  
18 equipment.

19 Your possession was the only thing we  
20 were interested in, and we got that information from  
21 your self-billing reports.

22 **Q Did you ever become aware that equipment**  
23 **in Sea Star's possession was in storage for sale by**  
24 **MBC and Emerald?**

Page 37

1 **Q If it was in a Sea Star terminal in**  
2 **Emerald's possession for sale --**

3 A A storage lot.

4 **Q -- did Emerald bill Sea Star for any of**  
5 **that equipment?**

6 MR. MOLDOFF: Object to the form of the  
7 question.

8 THE WITNESS: When you took possession of  
9 it and used it for Sea Star's cargo.

10 BY MR. ARMSTRONG:

11 **Q Did Emerald ever bill Sea Star for**  
12 **equipment while it was in Emerald's possession?**

13 A Would you say that slow.

14 **Q I thought I spoke slowly.**

15 A No, because --

16 **Q Did Emerald ever bill Sea Star for**  
17 **equipment while it was in Emerald's possession?**

18 A Not to my knowledge.

19 MR. MOLDOFF: Object to the form of the  
20 question, but you can answer.

21 THE WITNESS: Thank you.

22 BY MR. ARMSTRONG:

23 **Q Did Emerald have possession of any**  
24 **equipment in inland depots that Sea Star used?**

Thomas Holt

11 (Pages 38 to 41)

Page 38

1 A No, sir.

2 **Q Did Emerald retrieve equipment that was**  
3 **located in Emerald -- I'm sorry -- in Emerald depots**  
4 **that became Sea Star depots after the asset purchase?**

5 A I will tell you --

6 MR. MOLDOFF: Object to the form of the  
7 question.

8 THE WITNESS: Okay. I guess that's  
9 somewhere in here.

10 I would tell you that Emerald retrieved  
11 equipment in depots that Sea Star utilized for the  
12 delivery of their cargoes and never returned to  
13 Emerald. And Emerald subsequently was notified by  
14 truckers, railroads, "Come and get your equipment; it  
15 was abandoned by Sea Star."

16 BY MR. ARMSTRONG:

17 **Q Do you recall the names of any truckers**  
18 **that said, "Come and get your equipment; it was**  
19 **abandoned by Sea Star"?**

20 A There's one in New York. I don't have  
21 the name on the top of my head.

22 And there was two places in railroad  
23 yards. One in Chicago -- and this is multiple times.  
24 One in Chicago and one in -- I want to say Ohio, but

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1 I'm sorry, I don't have that at my fingertips. It is  
2 all covered under the invoices that we sent you.

3 **Q Do you recall the name of the railroads?**  
4 **Or names of the railroads?**

5 A CSX jumps to mind. I don't think there  
6 was any Norfolk Southern. But I do think it was CSX.

7 **Q Did you have any communications with Sea**  
8 **Star representatives regarding the undertaking of the**  
9 **obligation to report to Emerald its usage of the**  
10 **Emerald equipment?**

11 A I personally?

12 **Q Yes, sir.**

13 A I hate to ask you: Would you repeat that  
14 back, please.

15 Or you repeat it, because I'm confused  
16 with that question.

17 (Record read.)

18 THE WITNESS: I would tell you early on I  
19 did. Who I said it to, I don't remember. I probably  
20 even wrote letters, but I don't remember. But -- the  
21 answer is what I just said.

22 BY MR. ARMSTRONG:

23 **Q Is the early-on time frame, the June,**  
24 **July --**

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1 A August.

2 **Q -- August 2002?**

3 A You might as well say all of '02, to the  
4 best of my recollection.

5 **Q All right. Do you have any knowledge**  
6 **that Sea Star intended to defraud Emerald in**  
7 **connection with the self-billing reports?**

8 A Personal knowledge would go this way:  
9 The self-billing reports are self-explanatory. But  
10 as I started to see that the underreporting  
11 continued, I just felt that there was a pattern here.

12 You have to go back a little bit, if I  
13 may, I guess.

14 The whole position of entering into an  
15 agreement with Sea Star and Emerald was one based on  
16 a relationship that was a couple years old of the  
17 personalities and your owners of Sea Star/Saltchuk.

18 There was, built over that time frame, a  
19 trust. I mean, no sane person would turn over  
20 millions of dollars to somebody without certainly  
21 having several millions of dollars of letters of  
22 credit posted. We just took it on trust that this  
23 agreement that was entered into would be for the best  
24 of both parties, Sea Star and Emerald. And it's

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1 self-explanatory throughout the term and how it came  
2 about.

3 The intent was, eventually you would buy  
4 equipment; and what you wouldn't buy, you would turn  
5 back. Not everybody is perfect in covering the dots  
6 and crossing the Ts, but it was built on trust.

7 And when I started to see the problems, I  
8 talked to Bob McGee about it. I assumed he talked to  
9 his people. But eventually it got so bad that I  
10 finally said, "Enough is enough. Give me back all my  
11 equipment." The point being that I felt that my  
12 trust was placed in the wrong place.

13 And soon after, the telephone  
14 conversations between Tom and Bob stopped. He just  
15 would not answer. Even today, I don't even know if  
16 the poor guy is still alive, because I left several  
17 voice messages for him throughout August and  
18 September. I heard third-handedly that he was very  
19 ill.

20 But the fact of the matter is the owner  
21 of Emerald -- I, Tom Holt -- turned over all this  
22 equipment to them to use for periods of months,  
23 months, years, and never ever did I ask for letters  
24 of credit, moneys being deposited, et cetera. I was

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12 (Pages 42 to 45)

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1 quite content that your self-billing reports would  
2 pay down my loan at MBC.

3 Now, I don't know if that helps you or  
4 don't help you. But that's how the foundation was  
5 going forward, into that agreement.

6 **Q Payments under the -- under the  
7 self-billing reports went to MBC?**

8 A That's correct.

9 **Q Did they ever go to Emerald?**

10 A No, sir.

11 **Q Over what period of time did Emerald  
12 receive self-billing reports from Sea Star?**

13 A It went through '03. I think it stopped  
14 sometime in August/September of '03. That's a  
15 guesstimate.

16 **Q All of the payments under those reports  
17 went to MBC during that period of time?**

18 A That was the agreement, that the moneys  
19 would be paid to them for Sea Star utilizing Emerald  
20 equipment to pay down Emerald's loan with MBC.

21 **Q When you spoke with Scott Krieger about  
22 problems with the self-billing reports, what did he  
23 say to you?**

24 A It's not his problem.

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1 **Q Did he say why? Is that all he said?**

2 A He asked me why. And I said, Bob, as far  
3 as I know, they probably don't have the right idea on  
4 how the clerk makes up the self-billing reports. I  
5 don't know why.

6 But the position is, Hey, Tom, I'm a  
7 banker, I'm getting my loan reduced. Thank you very  
8 much. I'm not involved in your agreement between  
9 Emerald and Sea Star.

10 **Q When did you speak with Krieger about  
11 that?**

12 A The fall of '02 and then into '03. Then  
13 when I tried to find him later on, he had been  
14 replaced. He left the bank.

15 **Q And do you recall approximately how many  
16 discussions you had with him about the self-billing  
17 reports?**

18 A Once he told me it wasn't his problem, I  
19 stopped calling him on that issue.

20 **Q On what issues did you call him?**

21 A Then we had other business dealings, the  
22 family did, with Mr. Krieger, that --

23 **Q I should say, what other Sea Star issues?**

24 A Well -- Sea Star. Sea Star issues with

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1 MBC and Emerald?

2 There was a question being raised -- and  
3 I don't know what period of time -- about an  
4 indemnification meant (sic) that was in an agreement  
5 between yourselves, Sea Star, and MBC. I was made  
6 aware of it. I got copies of the documentation that  
7 flew around.

8 I don't know if that was in '05, '06.

9 Might have been '03. I just didn't -- somebody was  
10 misinterpreting the document, and it wasn't my -- my  
11 document. It was between MBC and Sea Star.

12 **Q Did you discuss with anyone regarding a  
13 claim that information contained in the self-billing  
14 reports was false and misleading?**

15 A Did I discuss with anyone?

16 **Q Yes.**

17 A I discussed it with Bob McGee. I  
18 discussed it with, as I told you, Scott Krieger.

19 Now, anyone after that? Obviously  
20 counsel. Obviously, Lorraine and Arthur, Jack Evans.  
21 I certainly did not put it in the Journal of  
22 Commerce, if that's your question.

23 **Q When did you have discussions with  
24 Lorraine Robins and Arthur Davis concerning the claim**

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1 **that information contained in the self-billing  
2 reports was false and misleading?**

3 A Literally, every time a self-billing  
4 report showed up.

5 And there came a time when I talked to  
6 Krieger about the position that Sea Star was taking,  
7 that they did not like the idea that their  
8 self-billing reports were being ripped apart by  
9 Lorraine. And this person complained bitterly to MBC  
10 and took the position they weren't going to send any  
11 more self-billing reports.

12 Somewhere there's a couple of emails,  
13 letters flying around that document that person's  
14 position. I think it was somebody in Puerto Rico.

15 **Q How were the self-billing reports false?  
16 In other words, what information contained in the  
17 self-billing reports was false?**

18 A I thought we covered this about  
19 45 minutes ago. But again, I'll tell you.

20 When the self-billing reports would be  
21 presented, we would -- "we" being Lorraine and Arthur  
22 and the office -- would gather all the information on  
23 that, gather the information from where they could  
24 find it -- i.e., railroads, truckers, Sea Star,

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13 (Pages 46 to 49)

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1 stevedores, anywhere they could find where that piece  
2 of equipment was. And in some instances, we would  
3 find it where you paid 14 days; you truly should have  
4 paid 30 because the agreement was for a 30-day  
5 minimum. In some instances, where you paid for 79  
6 days but the equipment wasn't returned for 159 days.  
7 And all backed up by documentation.

8 And each one of those was corrected and  
9 sent back to Sea Star.

10 And that's why the person on the other  
11 side of the table at Sea Star says, I'm done playing  
12 around with this. I'm spending too much time trying  
13 to find out what's right and what's wrong. And  
14 that's the letters I'm talking about that went off to  
15 MBC.

16 Again, MBC's position is, We're not  
17 involved in this.

18 **Q How did the information contained in the  
19 self-billing reports mislead Emerald?**

20 A Misled us to the extent of the amount of  
21 dollars that the loan was not reduced.

22 And to be fair, there were some that we  
23 agreed with you that we then went and issued credits,  
24 where we were wrong.

1 and never paying for it, by leasing it to third  
2 parties. We never found that out until we got into  
3 discovery. And we don't even know if that's the only  
4 instance.

5 As far as I'm concerned, the whole thing  
6 showed a pattern that somebody deliberately was  
7 taking advantage of my trust in Sea Star's people and  
8 using it to their advantage.

9 I don't understand why. It was only  
10 money that -- Lord knows, you got a balance sheet  
11 that don't have to worry about a couple million  
12 dollars. Why you would expose yourself like this, I  
13 have no idea.

14 **Q When did you first become aware of this  
15 reckless indifference?**

16 A I started to see it in the attitude --

17 MR. MOLDOFF: Object to the form of the  
18 question, but --

19 THE WITNESS: I'm sorry.

20 MR. MOLDOFF: Go ahead.

21 THE WITNESS: I got to slow down.

22 MR. MOLDOFF: No, you can answer. But  
23 don't speculate.

24 THE WITNESS: If I'm speculating, tell

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1 **Q What knowledge does Emerald have as to  
2 Sea Star's, quote, reckless difference as to the  
3 veracity of the information contained in the  
4 self-billing reports during preparation of the  
5 reports?**

6 A The attitude shown in the self-billing  
7 reports and the preparation of them showed a careless  
8 indifference, absolutely proving to me that I placed  
9 my trust in the wrong people; and that's why I  
10 demanded the equipment back.

11 I mean, you consider for a moment the  
12 equipment is leased out; we're getting paid rent,  
13 surely not the right amount. But so what? I didn't  
14 have to worry about getting that loan reduced at the  
15 bank.

16 But what did I do after I seen this --  
17 what I would call an arrogance on the part of the  
18 corporation for allowing this to continue, after time  
19 and again, I said, This is happening, straighten it  
20 out?

21 That I considered it, in my opinion, my  
22 trust literally was totally misplaced; and No. 2, I  
23 considered it fraud.

24 You well know you were using my equipment

1 me, and I'll try to straighten it out for you.

2 I started to become aware of it with the  
3 self-billing reports and the amount of corrections  
4 that were on them. I mean, we're not talking one or  
5 two corrections. It's voluminous.

6 Then the arrogance of the Sea Star  
7 people: We're not going to do this. We're not going  
8 to report this anymore. We're not going to change  
9 this.

10 And they weren't complaining to us --  
11 "us," being Emerald. They were complaining to MBC.

12 And MBC then said, Hey, we're not involved in this.  
13 MR. MOLDOFF: Would you like to take a  
14 break?

15 THE WITNESS: No, I'm fine.

16 BY MR. ARMSTRONG:

17 **Q Did you first become aware of this in  
18 2002?**

19 MR. MOLDOFF: Objection to the form of  
20 the question.

21 THE WITNESS: I've answered that question  
22 nine ways.

23 MR. MOLDOFF: Object to the form of the  
24 question.

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Thomas Holt

14 (Pages 50 to 53)

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1 BY MR. ARMSTRONG:

2 **Q I asked when did you first become aware?**  
3 **First.**

4 A Best of my knowledge, the pattern started  
5 showing up in the late third/early fourth quarter of  
6 '02.

7 Now, that's to my best recollection. It  
8 certainly manifested itself when you got into '03.  
9 And absolutely when we got into some discovery, which  
10 shows where it was done. I mean, we saw in discovery  
11 documents between your people -- you must be aware of  
12 this, Counsel -- that they were saying, We can't do  
13 this anymore, we got to report this equipment.

14 You read those documents between your  
15 people. I have, in discovery.

16 **Q Do you recall the documents you're**  
17 **talking about?**

18 A Yeah. It was a document that went  
19 from -- I don't remember the guy's name right now.  
20 But he sent it to the operating people in  
21 Puerto Rico: "We're being charged for this. Get rid  
22 of this equipment."

23 And that's when they started backdating  
24 documents.

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1 Look, you know this better than me. You  
2 obviously -- in what documents you to sent to Emerald  
3 under discovery. Our whole claim is based on your  
4 documents and whatever documents we could find from  
5 the people we talked about.

6 But the whole thing is your own  
7 documents.

8 **Q Do you recall what documents were being**  
9 **backdated?**

10 A The documents that all of a sudden, after  
11 several months, when somebody woke up and said, Gee,  
12 we better put this in the storage lot; and then,  
13 voilà, it showed up in the storage lot. But the  
14 documents were backdated several months: Your  
15 documents.

16 Many instances, equipment that we had for  
17 sale, we had buyers that come into our area to  
18 inspect the equipment. I mean, we look at it on  
19 Tuesday; Wednesday it was gone. Where did it go?  
20 Well, it's on loan going up to Minneapolis.

21 You know, I better just slow down a  
22 minute because, quite frankly, this demonstrates time  
23 and again the mistrust that I put in this company.

24 And, boy, the issue today and all of the shenanigans

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1 that are going on to get this resolved, it certainly  
2 shows that this company is not of the -- what's the  
3 word I want to use? -- of the ethics that I thought  
4 they had.

5 So now you understand my feelings.

6 **Q What knowledge does Emerald have that Sea**  
7 **Star's preparation of the, quote, inaccurate**  
8 **self-billing reports, unquote, were with the**  
9 **intention of defrauding Emerald?**

10 A The preponderance of continuing the  
11 inaccurate, deliberate reporting of the self-billing  
12 reports. I'll give you one example.

13 **Q Okay.**

14 A You took our equipment and subleased it,  
15 never paid us for it. You subleased 75 pieces of  
16 equipment.

17 When you look at the discovery that we  
18 were able to -- and that's only one piece that you  
19 let us have -- it violated our agreement. You were  
20 never allowed to take our equipment and give it to a  
21 third party; and you collected money. And not pay  
22 under the self-billing reports?

23 **Q Do you recall --**

24 A Forget whether you didn't pay it or you

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1 did pay it: You were not allowed to do it.

2 **Q Do you recall the name of the sublessee?**

3 A CSX Railroad.

4 **Q Do you recall when that sublease**  
5 **occurred?**

6 A The document will speak for itself.

7 MR. MOLDOFF: If you recall.

8 THE WITNESS: I don't recall the date. I  
9 don't recall what year.

10 BY MR. ARMSTRONG:

11 **Q Okay.**

12 A I saw it. I was so infuriated -- I mean,  
13 how do you have a business relationship --

14 MR. MOLDOFF: There's no question  
15 pending.

16 THE WITNESS: Thank you.

17 MR. MOLDOFF: I know you want to vent,  
18 but this is not necessarily the place to vent.

19 BY MR. ARMSTRONG:

20 **Q Did Emerald ever rely on Sea Star's**  
21 **self-billing reports?**

22 A Constantly.

23 **Q When did Emerald stop relying on the**  
24 **self-billing reports?**

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15 (Pages 54 to 57)

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1 A I don't think we ever stopped. What we  
2 were doing was taking the self-billing reports and  
3 the various information we had at our disposal and  
4 correcting them.

5 **Q So am I correct in understanding that you**  
6 **weren't taking the self-billing reports as gospel?**

7 A Not when we seen how many mistakes were  
8 in them.

9 Remember one thing: This is -- Emerald  
10 is a company that did not have 93 people in the back  
11 room running numerous computers. We relied on the  
12 trustworthiness of Sea Star.

13 The agreement was, you pay the money to  
14 MBC; the self-billing reports would come in; and we  
15 accepted them until we started seeing, month after  
16 month, mistakes.

17 Now, when it became very obvious, that's  
18 when I said, I can't trust them anymore. I canceled  
19 your lease.

20 What right person, in their right mind  
21 frame, would cancel a lease when they were collecting  
22 money -- sure, not the right amount. But as far as I  
23 was concerned, you were probably going to destroy  
24 another 2,000 pieces of equipment and I'd never see

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1 it.

2 At the moment in time, there were still  
3 about 900 pieces that were unaccounted for by you  
4 that we couldn't find on your self-billing reports.  
5 Now --

6 MR. MOLDOFF: There's no question  
7 pending.

8 THE WITNESS: Enough. Enough already.  
9 BY MR. ARMSTRONG:

10 **Q When you're talking about canceling the**  
11 **lease, are you referring to Alan Moldoff's letter in**  
12 **October 2003?**

13 A If that's when it was, I asked my  
14 attorney to cancel the lease.

15 **Q So that's when you decided to cancel the**  
16 **lease?**

17 A Might have been a couple days before  
18 that. I don't know.

19 **Q Well, in that time frame; is that**  
20 **correct?**

21 A Yes, sir.

22 **Q Emerald started correcting the Sea Star**  
23 **self-billing reports in May and June 2002; correct?**

24 A I don't know. I could tell you it was in

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1 a time frame of that '02. It was probably sometime  
2 in -- whenever you started getting your self-billing  
3 reports out.

4 **Q Do you recall any self-billing report**  
5 **that Emerald did not correct?**

6 MR. MOLDOFF: If you know.

7 BY MR. ARMSTRONG:

8 **Q If you know.**

9 A I don't know that question.

10 **Q Do you recall whether Emerald ever relied**  
11 **on a report as being accurate after June 2002?**

12 A I don't know if you --

13 MR. MOLDOFF: Object to the form of the  
14 question.

15 THE WITNESS: To me that question has  
16 been answered several times.

17 But clearly understand, the goal of  
18 Emerald was to audit the self-billing reports of Sea  
19 Star; and in that auditing is how we started to see  
20 the pattern.

21 BY MR. ARMSTRONG:

22 **Q When you say "audit," what do you mean?**

23 A I mean how much money was paid to the  
24 bank. And let's not misunderstand what this

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1 self-billing report is, because it was a self-serving  
2 document, by Sea Star to Emerald, who trusted  
3 implicitly the Sea Star people. Now, here we go:  
4 All of a sudden we start to see all these mistakes.

5 Please, what's your next question?

6 **Q Did the audit include investigation as to**  
7 **whether there were mistakes in the self-billing**  
8 **reports?**

9 A That's how they came about, yeah.

10 **Q Would it be fair to say then that as far**  
11 **as you were concerned, the self-billing report was**  
12 **not accurate until Emerald had audited it?**

13 MR. MOLDOFF: Object to the form of the  
14 question.

15 THE WITNESS: I don't understand that  
16 question. I could answer it this way: As far as  
17 Emerald was concerned, they were relying on the  
18 accuracy of your self-billing report.

19 When it became obvious that there were  
20 numerous mistakes in it, and when we complained to  
21 your people about these mistakes, it then became very  
22 obvious, the arrogance and the cavalier way that Sea  
23 Star was treating Emerald.

24 Hell, you came up with two self-billing

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16 (Pages 58 to 61)

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1 reports in one month. We didn't know which one was  
2 right. But please, ask your questions.

3 BY MR. ARMSTRONG:

4 **Q Are you referring to the self-billing**  
5 **reports in September 2002?**

6 A Yes.

7 **Q And when you found out that there were**  
8 **two self-billing reports in September 2002, what**  
9 **action did you take?**

10 A Whatever action the office did, they did.

11 MR. MOLDOFF: I object to the form of the  
12 question.

13 BY MR. ARMSTRONG:

14 **Q And who was responsible for taking that**  
15 **action?**

16 A The office, Lorraine or Arthur. Assuming  
17 it was in -- yeah, Lorraine or Arthur.

18 **Q Would it be fair to say that after you**  
19 **began -- that is, after Emerald began discovering**  
20 **mistakes -- Emerald didn't rely on the accuracy of**  
21 **Sea Star's self-billing reports?**

22 MR. MOLDOFF: Object to the form of the  
23 question.

24 THE WITNESS: We certainly did not rely

1 THE WITNESS: I don't know. I don't

2 know -- asked and answered 19 times: It could have  
3 been August; it could have been June.

4 MR. MOLDOFF: Don't speculate. If you  
5 don't know, you don't know.

6 THE WITNESS: No, I'm trying to help him  
7 out.

8 MR. MOLDOFF: So you don't know.

9 BY MR. ARMSTRONG:

10 **Q Would Arthur Davis have more knowledge in**  
11 **regard to that?**

12 A Arthur and Lorraine.

13 **Q Did you speak with anyone at Sea Star**  
14 **regarding Emerald's reliance on the self-billing**  
15 **reports to determine the rental fees for the Emerald**  
16 **equipment?**

17 A I personally talked to McGee in regards  
18 to the fact that the self-billing reports were not  
19 accurately showing the amount of moneys owed. That  
20 was I, personally.

21 My other people were contacted virtually  
22 on a daily basis between Emerald's office and your  
23 offices -- various offices.

24 **Q Do you know the names of any Sea Star**

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1 on the accuracy. We had to then research how Sea  
2 Star put together the self-billing report on  
3 individual pieces of equipment; and then we had to  
4 get as much information as we could on that  
5 individual transaction.

6 When that was correlated and the  
7 corrections made, they were immediately sent back to  
8 the Sea Star people.

9 BY MR. ARMSTRONG:

10 **Q Did Emerald audit every self-billing**  
11 **report --**

12 A Yes.

13 **Q -- submitted by Sea Star?**

14 MR. MOLDOFF: If you know. And object to  
15 the form of the question.

16 THE WITNESS: Emerald took every  
17 self-billing report and corrected it; and as I told  
18 you earlier, in some instances, it was to the favor  
19 of Sea Star.

20 BY MR. ARMSTRONG:

21 **Q Did that auditing begin in May or**  
22 **June 2002?**

23 MR. MOLDOFF: Object to the form of the  
24 question.

1 people?

2 A Sitting here today, I cannot tell you  
3 specifically their names.

4 **Q And would it be Arthur Davis and Lorraine**  
5 **Robins who would have been contacting these Sea Star**  
6 **people?**

7 A Yes. And -- and to that extent, it's  
8 also in your documents. You know who the people are.  
9 You've read the names. You've read the various  
10 correspondence going back and forth.

11 Could I personally today sit here and  
12 tell you that Mr. Bates did this or Mr. McGee did  
13 that or Henry Aldridge did something else? No. The  
14 fact of the matter is, it's in the documents -- your  
15 documents, not my documents.

16 **Q Was Emerald ever involved in collecting**  
17 **rents based on Sea Star's usage of Emerald equipment?**

18 MR. MOLDOFF: Object to the form of the  
19 question.

20 THE WITNESS: I don't understand the  
21 question.

22 BY MR. ARMSTRONG:

23 **Q Did collections go through Emerald rather**  
24 **than MBC with respect to usage of Emerald equipment?**

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17 (Pages 62 to 65)

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1 MR. MOLDOFF: Objection to the form of  
2 the question. If you understand it, you can answer.  
3 THE WITNESS: Well, if he's asking me did  
4 Emerald collect any money directly from Sea Star, I  
5 don't remember it; because the agreement was it was  
6 to go to MBC to reduce Emerald's debt.  
7 (Brief recess.)  
8 MR. MOLDOFF: If we're going back on the  
9 record, Mr. Holt wants to just clarify or clear up  
10 some earlier testimony.  
11 So, Mr. Holt, do you want to do that?  
12 THE WITNESS: Well, I'll try to clarify  
13 it to the best of my ability.  
14 There was a question about who paid Jack  
15 Evans and Mrs. Evans and Arthur Davis and Lorraine.  
16 I had to refresh my memory and I had to go back and  
17 look at it.  
18 Jack Evans and Mrs. Evans were paid by  
19 secured creditors and also Storage Transfer, who  
20 subsequently bought the loan from MBC. Lorraine and  
21 Arthur was never paid by Emerald. Emerald had no  
22 money. And/or I believe Greenwich in, Greenwich --  
23 well --  
24 MR. MOLDOFF: Which was?

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1 THE WITNESS: They were working as agents  
2 for Greenwich, yes.  
3 MR. MOLDOFF: For MBC.  
4 THE WITNESS: For MBC.  
5 BY MR. ARMSTRONG:  
6 Q Excuse me. Were working as agents for  
7 MBC?  
8 A MBC.  
9 MR. MOLDOFF: If you know.  
10 THE WITNESS: If I know. I know that  
11 Greenwich was selling equipment. Emerald was selling  
12 equipment. But the fact of the matter is, actual  
13 payroll never came out of Emerald. Emerald did not  
14 have any money.  
15 BY MR. ARMSTRONG:  
16 Q Did Greenwich pay Art Davis?  
17 A To my knowledge --  
18 Q If you know.  
19 A To my knowledge, they did; and also  
20 Lorraine.  
21 Q Lorraine Robins?  
22 A Yes.  
23 Q And who were the secured creditors that  
24 paid John Evans and his wife?

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1 MR. MOLDOFF: If you know.  
2 THE WITNESS: I want to tell you MBC, but  
3 I'm not definitely sure about that. And at that  
4 point in time, it was probably Storage Transfer.  
5 BY MR. ARMSTRONG:  
6 Q The Counterclaim -- or the Amended  
7 Counterclaim refers to Emerald's ongoing work on  
8 detailed invoices to Sea Star, setting forth the  
9 amounts owed to Emerald under the equipment rental  
10 agreement.  
11 A You're reading from where, sir?  
12 Q I'm looking at Paragraph 11 of Exhibit A;  
13 and that refers to Paragraph 21 of the Amended  
14 Counterclaim. This -- I'll be happy to show you.  
15 A 21. Okay.  
16 Yes, sir.  
17 Q Is Emerald's work still ongoing?  
18 MR. MOLDOFF: If you know.  
19 THE WITNESS: It's not as active as it  
20 used to be. But if we do find a piece of equipment  
21 that comes out of the blue, we adjust invoices  
22 accordingly. But virtually, we're shut down. It's  
23 only when something comes into our lap voluntarily  
24 rather than us going out and look for it.

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1 BY MR. ARMSTRONG:  
2 Q Well, who is responsible at Emerald, or  
3 for Emerald, to adjust invoices?  
4 A That would be myself, Lorraine or Arthur.  
5 Q You referred to corrected invoices.  
6 Would adjusted invoices be corrections of Emerald  
7 invoices?  
8 A Corrected or adjusted is one and the  
9 same.  
10 MR. MOLDOFF: Objection to the form of  
11 the question. But --  
12 BY MR. ARMSTRONG:  
13 Q When Emerald submitted corrected  
14 self-billing reports, so to speak, to Sea Star, do  
15 you know whether Sea Star responded to Emerald's  
16 corrections?  
17 A Yes.  
18 Q Do you know whether Sea Star agreed with  
19 Emerald's corrections?  
20 A To my knowledge, they agreed; and to my  
21 knowledge, they disagreed. And very, very definitely  
22 took the position that they weren't going to be  
23 changing any more self-billing reports.  
24 Q When Sea Star agreed with Emerald



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18 (Pages 66 to 69)

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1 **corrections, do you know whether Sea Star changed its**  
2 **self-billing reports to reflect that agreement?**

3 A I would tell you no, because the moneys  
4 were never paid.

5 **Q The moneys were never paid to MBC?**

6 A Never paid to anybody, MBC or Emerald.

7 **Q Was there a period of time --**

8 A Or Storage Transfer.

9 **Q Was there a period of time when Emerald**  
10 **was to receive direct payment of the per-diem rental**  
11 **charges?**

12 A Only after the MBC loan was to be paid  
13 off.

14 **Q Was the MBC loan ever paid off?**

15 A Not by Emerald.

16 **Q Was it paid off by anybody?**

17 A I have no knowledge of that.

18 **Q Do you have knowledge that the MBC loan**  
19 **was ever paid off?**

20 A I have knowledge that MBC sold the loan.

21 **Q Well, do you have knowledge that Emerald**  
22 **has ever been entitled to direct payments of any**  
23 **per-diem rentals while the equipment rental agreement**  
24 **was in effect?**

1 THE WITNESS: I don't know.

2 BY MR. ARMSTRONG:

3 **Q Have you seen that document before?**

4 A I probably did. I can't recall it  
5 specifically.

6 **Q Was Art Davis responsible for locating**  
7 **discrepancies on Sea Star's self-billing report?**

8 A He would be responsible to look at the  
9 self-billing reports and audit them, yes.

10 **Q And do you know whether the self-billing**  
11 **report was corrected by Sea Star?**

12 A I have no idea.

13 **Q In June 2002, was Emerald relying on the**  
14 **accuracy of Sea Star's self-billing report?**

15 MR. MOLDOFF: Object to the form of the  
16 question.

17 THE WITNESS: Emerald always relied on  
18 the accuracy of Sea Star's self-billing report. I  
19 don't know if there was one in June. I can't speak  
20 specifically to a self-billing report in June.

21 BY MR. ARMSTRONG:

22 **Q If Emerald was relying on the accuracy of**  
23 **Sea Star's self-billing report in May or June 2002,**  
24 **what was the reason for auditing and looking for**

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1 MR. MOLDOFF: Objection to the form of  
2 the question.

3 THE WITNESS: I don't have knowledge.  
4 But the fact is, that was not the intent of the  
5 agreement with MBC at Sea Star.

6 BY MR. ARMSTRONG:

7 **Q Was the intent of the agreement what you**  
8 **said before in regard to paying down the loan?**

9 A That's correct.

10 MR. ARMSTRONG: Let me show you a copy of  
11 a fax dated June 4th, 2002, that I'll ask the court  
12 reporter to mark as Exhibit 2 for identification.

13 (E.E.L. Exhibit 2 was marked for  
14 identification.)

15 BY MR. ARMSTRONG:

16 **Q Have you ever seen that document before?**

17 A This is probably one of the many  
18 documents I talked about earlier. There was  
19 communication went back and forth between Emerald and  
20 Sea Star.

21 **Q At this time, Art Davis was auditing the**  
22 **self-billing report?**

23 A I guess so.

24 MR. MOLDOFF: If you know.

1 **discrepancies?**

2 A The reason for looking for discrepancies  
3 would be to see if there were any, based on  
4 information that Emerald had.

5 **Q Was that a normal procedure, from the**  
6 **beginning of the self-billing reports?**

7 A Only to look at the accuracy of the  
8 report.

9 **Q And to point out any discrepancies;**  
10 **correct?**

11 A Did it many times.

12 MR. MOLDOFF: Objection to the form of  
13 the question.

14 BY MR. ARMSTRONG:

15 **Q Do you recall pointing out or Emerald**  
16 **pointing out any discrepancies before June 2002?**

17 MR. MOLDOFF: If you know.

18 THE WITNESS: No.

19 MR. ARMSTRONG: Okay. Let me show you a  
20 copy of an email from Lorraine Robins dated  
21 June 26th, 2002. Have you ever seen that document?

22 I'll ask that the court reporter mark it  
23 as Exhibit 3 for identification.

24 (E.E.L. Exhibit 3 was marked for



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19 (Pages 70 to 73)

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<p>1 identification.)</p> <p>2 THE WITNESS: This document I have not</p> <p>3 seen.</p> <p>4 BY MR. ARMSTRONG:</p> <p>5 Q Were you aware that Lorraine Robins was</p> <p>6 monitoring Sea Star in June 2002?</p> <p>7 A Was I aware that she was doing it --</p> <p>8 Q Yes.</p> <p>9 A -- in '02? In June of '02.</p> <p>10 MR. MOLDOFF: If you know.</p> <p>11 THE WITNESS: I don't know.</p> <p>12 BY MR. ARMSTRONG:</p> <p>13 Q Had you given Lorraine Robins any</p> <p>14 instructions or made any requests that she monitor</p> <p>15 Sea Star's activities in June 2002?</p> <p>16 A I can't speak of June. But I can tell</p> <p>17 you, I gave her instructions to start monitoring, as</p> <p>18 you call it -- or checking the correctness of their</p> <p>19 bills as these mistakes kept popping up.</p> <p>20 Q Do you know whether you gave her</p> <p>21 instructions before the date of this email?</p> <p>22 A I can't tell you when it was.</p> <p>23 MR. ARMSTRONG: Let me show you a copy of</p> <p>24 a Greenwich Terminals invoice dated March 6th,</p>	<p>1 A So you're talking after April 29th,</p> <p>2 '02?</p> <p>3 Q Yes.</p> <p>4 A And the question is MBC --</p> <p>5 Q Making claims against the NPR bankruptcy</p> <p>6 estate at that time for usage of Emerald equipment</p> <p>7 after April 29th, 2002.</p> <p>8 MR. MOLDOFF: If you know.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 BY MR. ARMSTRONG:</p> <p>11 Q You don't recall?</p> <p>12 A Alls I recall was that MBC went into the</p> <p>13 court and said, "I want to sell this equipment; I</p> <p>14 have a loan against it."</p> <p>15 And the Court allowed them to. And then</p> <p>16 Emerald entered into the agreement to do the deal</p> <p>17 with Sea Star and MBC, and that's why we're here</p> <p>18 today on the self-billing reports. Best of my</p> <p>19 knowledge.</p> <p>20 MR. ARMSTRONG: All right. Let me show</p> <p>21 you two checks payable to Martin McDonald that I'll</p> <p>22 ask the court reporter to mark as composite Exhibit 5</p> <p>23 for identification.</p> <p>24 (E.E.L. Exhibit 5 was marked for</p>
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<p>1 2003, that I'll ask the court reporter to mark as</p> <p>2 Exhibit 4 for identification.</p> <p>3 (E.E.L. Exhibit 4 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. ARMSTRONG:</p> <p>6 Q Do you recognize that document?</p> <p>7 A I've never seen this document.</p> <p>8 Q Okay. Let me show you a copy of</p> <p>9 Exhibit 14 to the Storage Transfer deposition that I</p> <p>10 ask the court reporter -- strike that.</p> <p>11 Exhibit 14 to the Storage Transfer</p> <p>12 deposition: Have you ever seen that document before?</p> <p>13 A No, I never saw it.</p> <p>14 Q Do you recall having any communications</p> <p>15 with Scott Krieger or anyone else at MBC regarding</p> <p>16 MBC claims for use of Emerald equipment after</p> <p>17 April 29th, 2002, outside the equipment rental</p> <p>18 agreement?</p> <p>19 Let me rephrase it.</p> <p>20 A Please.</p> <p>21 Q Do you recall having discussions or</p> <p>22 communicating with anyone at MBC regarding MBC claims</p> <p>23 against NPR for use of Emerald equipment after</p> <p>24 April 29th, 2002?</p>	<p>1 identification.)</p> <p>2 BY MR. ARMSTRONG:</p> <p>3 Q Have you ever seen copies of those checks</p> <p>4 payable to McDonald?</p> <p>5 A First time I saw this was in the</p> <p>6 documents you handed me a minute ago. These checks</p> <p>7 I've never seen before.</p> <p>8 Q Okay. Did you have any communications</p> <p>9 with anyone at MBC concerning MBC's payments of</p> <p>10 McDonald?</p> <p>11 A The only thing that I was involved in in</p> <p>12 those days was for McDonald to find as much of the</p> <p>13 equipment as he could of Emerald's on behalf of MBC.</p> <p>14 So evidently -- I'm not speculating, but I guess he</p> <p>15 was working for MBC there.</p> <p>16 Q After April 29th, 2002, was there a</p> <p>17 procedure at Emerald in regard to taking inventories</p> <p>18 of Emerald equipment?</p> <p>19 A We relied on the inventories that came</p> <p>20 from NPR and then over to Sea Star.</p> <p>21 Q Did Emerald make its own inventories?</p> <p>22 A After the bankruptcy?</p> <p>23 Q Yes, sir.</p> <p>24 A I don't think we did. I'm not sure.</p>

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20 (Pages 74 to 77)

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<p>1 <b>Q Let me show you a copy of Exhibit 20 to</b>  2 <b>the Storage Transfer deposition.</b>  3 <b>Have you ever seen those documents</b>  4 <b>before?</b>  5 A I never seen this document before.  6 <b>Q Well, I've given you two pieces of paper.</b>  7 <b>The first is an email, and the second is an</b>  8 <b>attachment to that email. The email states, in the</b>  9 <b>first sentence, "I've attached what I believe is the</b>  10 <b>current inventory of the Emerald equipment."</b>  11 <b>Do you know when that inventory was</b>  12 <b>prepared?</b>  13 MR. MOLDOFF: If you know.  14 THE WITNESS: I don't know when it was  15 prepared, but I know the methodology.  16 BY MR. ARMSTRONG:  17 <b>Q All right. Can you tell me the</b>  18 <b>methodology for preparation.</b>  19 A They had an inventory that they knew was  20 Emerald equipment. And every time they sold it a  21 piece, or it was obviously in possession of Sea Star,  22 they just accounted for it on their internal  23 inventory that they maintained as Emerald.  24 <b>Q All right. What was that inventory that</b></p>	<p>1 <b>Q Was --</b>  2 A They had knowledge of inventory.  3 <b>Q Was -- you referred to inventory that was</b>  4 <b>maintained by Sea Star --</b>  5 A Yes.  6 <b>Q -- for some period of time.</b>  7 A Yes.  8 <b>Q There was also an inventory maintained by</b>  9 <b>one of the Holt companies after April 27th, 2002,</b>  10 <b>wasn't there?</b>  11 A Okay.  12 MR. MOLDOFF: Object to the form.  13 BY MR. ARMSTRONG:  14 <b>Q Was there?</b>  15 A Probably was. You're talking about Holt  16 Logistics.  17 <b>Q And how did that inventory differ from</b>  18 <b>the Sea Star inventory?</b>  19 A Well, would be the equipment that Sea  20 Star did not take.  21 <b>Q Well, would it have been the total</b>  22 <b>equipment?</b>  23 A What --  24 MR. MOLDOFF: Object to form.</p>
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<p>1 <b>they knew was Emerald equipment?</b>  2 A What was it?  3 <b>Q Yes, sir.</b>  4 A It was a list of all the equipment of  5 Emerald's; and they added and subtracted as the days,  6 weeks and months went on.  7 <b>Q Are you talking about the NPR inventory?</b>  8 A No, NPR was gone. You're talking in  9 September of '03?  10 <b>Q Yes, sir.</b>  11 A They had the Emerald inventory that they  12 got from NPR that was maintained by Sea Star for a  13 period of time -- two months, three months, I don't  14 know. They probably even got inventories of Emerald  15 equipment that Sea Star had in their possession.  16 So from the total inventory of Emerald  17 equipment that Sea Star did not have or was just  18 laying around the world in other people's  19 possessions, they kept a record.  20 And this inventory is self-explanatory.  21 It tells the bank where equipment was at that moment  22 in time and how they were selling against it. The  23 letter is self-explanatory. But I never saw the  24 letter.</p>	<p>1 THE WITNESS: What company?  2 BY MR. ARMSTRONG:  3 <b>Q Of Emerald.</b>  4 A Sea Star did not take the total equipment  5 of Emerald.  6 <b>Q I'm saying would the Holt Logistics</b>  7 <b>inventory have covered all of the Emerald equipment?</b>  8 A Yes, sir.  9 <b>Q Could this have been based on the Holt</b>  10 <b>Logistics inventory -- that is, the inventory that is</b>  11 <b>attached to the Davis September 25th email?</b>  12 A I have no idea.  13 MR. MOLDOFF: If you know.  14 BY MR. ARMSTRONG:  15 <b>Q Would it be fair to say then that you</b>  16 <b>don't know how this inventory attached to the</b>  17 <b>September 25th email was put together?</b>  18 A I said that. I told you that I only know  19 their methodology. I don't know how he came to that  20 one. He probably did it by adding and subtracting  21 what the inventories were that he had in his control.  22 He had inventories, start and stop inventories.  23 <b>Q He had Holt Logistics inventories in his</b>  24 <b>control, didn't he?</b></p>

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21 (Pages 78 to 81)

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1 A I don't know. Do you know? I don't  
2 know. If he did, he did.

3 **Q Didn't Arthur Davis work for Holt  
4 Logistics?**

5 A I don't know if he worked for them in  
6 September of '03.

7 **Q Did he have an email address at Holt  
8 Logistics any time after April 29, 2002?**

9 MR. MOLDOFF: If you know.

10 THE WITNESS: You would have to ask him.

11 BY MR. ARMSTRONG:

12 **Q What is Holt Oversight?**

13 A It's Holt Logistics.

14 **Q Do you recognize the adavis@holtoversight  
15 email address?**

16 A That's an email address, yes. Do I  
17 recognize it? I assume it is his.

18 You're asking me things that I'm not  
19 privy to. You have to ask him. I wasn't there in  
20 April of '03, at Holt Logistics.

21 **Q The first sentence of the second  
22 paragraph states, "Lorraine and I believe the  
23 invoices to Sea Star Line will total approximately  
24 1 mil."**

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1 **Did you have any discussions with  
2 Lorraine Robins and Arthur Davis concerning the total  
3 invoices to Sea Star Line?**

4 A No.

5 **Q Do you know how Arthur Davis developed  
6 the belief that the invoices to Sea Star Line will  
7 total approximately 1 mil, as stated in the  
8 September 25th, 2003, email?**

9 A I don't know that -- how Mr. Evans'  
10 mind -- Mr. Davis' mind works with regards to his  
11 estimations.

12 I can probably tell you that the ongoing  
13 self-billing report is the document that he was  
14 working from.

15 I have no idea how much was billed to Sea  
16 Star and paid to the bank.

17 **Q Do you know how the 1 mil total became,  
18 quote, damages in excess of \$4 million, as alleged in  
19 the Amended Counterclaim?**

20 A I think you're confusing one number with  
21 another. You're taking the supposition of Mr. Davis  
22 for rentals of a million dollars he thought would  
23 happen versus the excess of \$4 million, which  
24 consists of actual unpaid rent owed by Sea Star and

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1 actual missing equipment that Sea Star owes for.

2 So you're confusing two documents there.

3 On one you're taking what he thinks is going to  
4 happen, which has got nothing to do with the  
5 \$4 million.

6 **Q Well, how much of the \$4 million is  
7 rental?**

8 MR. MOLDOFF: If you know.

9 THE WITNESS: At what point in time?

10 BY MR. ARMSTRONG:

11 **Q As of the date the Amended Counterclaim  
12 was filed. That Amended Counterclaim asked for  
13 damages in excess of \$4 million.**

14 A Somewhere you'll find your self-billing  
15 reports that were corrected probably equal -- and  
16 this is off the top of my head; I haven't added it  
17 up -- about 2,2-, 2,3- of unpaid rent; and then the  
18 balance would be missing equipment that you never  
19 returned.

20 That's got nothing to do with what is the  
21 supposition of Mr. Davis in that -- did you say  
22 that's an email? In that document, whatever it is.

23 BY MR. ARMSTRONG:

24 **Q Did you and Mr. Davis ever discuss his**

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1 **supposition as to what the invoices to Sea Star would  
2 total any time in September or October 2003?**

3 MR. MOLDOFF: If you recall.

4 THE WITNESS: Not to my recollection. We  
5 always talked about numbers -- how much the fleet  
6 would sell for, how much he could get for a 40-foot  
7 chassis versus a 20; how much would the income be  
8 that we could anticipate from Sea Star.

9 We always felt that there would be far  
10 significant moneys to pay off in the time frame that  
11 Emerald was operating on.

12 BY MR. ARMSTRONG:

13 **Q To pay off what?**

14 A To pay off the debt to MBC and give a  
15 return to Emerald.

16 **Q Do you recall what the debt to MBC was in  
17 September of 2003? That is, the Emerald debt.**

18 A Not exactly. I'm guesstimating it was  
19 several millions of dollars. Some reason my mind  
20 says 6, but I think it was a little less than that.

21 I mean, the methodology -- if we were  
22 paid, as we're entitled to, it probably comes close  
23 to 6 million.

24 **Q Show you a copy of a letter dated**

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22 (Pages 82 to 85)

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<p>1 <b>October 30th, 2003, that is Exhibit 19 to the</b>  2 <b>Storage Transfer deposition.</b>  3 <b>Have you ever seen that letter before?</b>  4 A This is a letter from MBC addressed to  5 Thomas Holt, Jr., who happens to be my son, at  6 October 30th, '03. What's it say?  7 I've never seen this letter.  8 MR. MOLDOFF: I would also, for the  9 record, note that I'm not sure where or how that  10 relates to any of the -- the Amended Counterclaim or  11 any of the areas of listed testimony on the Notice of  12 Deposition, unless Counsel can direct me to how it  13 relates to any of the areas listed.  14 BY MR. ARMSTRONG:  15 <b>Q Were you going to buy the debt from MBC?</b>  16 A No, sir.  17 <b>Q Do you know what the basis of the</b>  18 <b>statement, "As you're probably aware, we have</b>  19 <b>negotiated a deal in principle to sell MBC Leasing's</b>  20 <b>Emerald loan documents to your father effective</b>  21 <b>11/1/03"?</b>  22 A No, sir.  23 <b>Q Did you have any discussions with</b>  24 <b>Lorraine Robins regarding establishing Storage</b></p>	<p>1 <b>Q Did anyone ever ask Emerald to join into</b>  2 <b>the Loan Sale and Assignment Agreement, which has</b>  3 <b>been marked as Exhibit 2 to the Storage Transfer</b>  4 <b>deposition?</b>  5 MR. MOLDOFF: Could we just finish our  6 colloquy before the witness left? You were  7 explaining why you think this inquiry --  8 MR. ARMSTRONG: There are questions as to  9 damage. There are questions as --  10 MR. MOLDOFF: Could you just let me  11 finish.  12 MR. ARMSTRONG: Well, you're asking me to  13 explain.  14 MR. MOLDOFF: Well, let me finish asking  15 it.  16 MR. ARMSTRONG: All right.  17 MR. MOLDOFF: -- how it relates to any of  18 the areas listed in the deposition notice.  19 MR. ARMSTRONG: And I've told you: It  20 relates to the damages claimed by Emerald, not only  21 as to amount but also as to right.  22 MR. MOLDOFF: Well, that's a defense.  23 This question is just about the damages. That's your  24 defense.</p>
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<p>1 <b>Transfer?</b>  2 A No, sir.  3 <b>Q Were you aware of the Loan Sale and</b>  4 <b>Assignment Agreement signed by Storage Transfer on</b>  5 <b>November 1st, 2003?</b>  6 MR. MOLDOFF: Counsel, could you please  7 tell me, before I let him respond to that question,  8 which area of testimony that you have appended to  9 your Notice of Deposition that relates to the  10 question you just asked.  11 MR. ARMSTRONG: It relates to the  12 damages.  13 MR. MOLDOFF: How does it relate to the  14 damages? The damages arise out of the invoices that  15 have been submitted --  16 MR. ARMSTRONG: Well, as you know,  17 Counsel, there's a question --  18 THE WITNESS: Excuse me, I'll interrupt.  19 While you guys are duking it out, I'll go to the  20 boys' room.  21 MR. ARMSTRONG: Okay.  22 (Brief recess.)  23 (Record read.)  24 BY MR. ARMSTRONG:</p>	<p>1 MR. ARMSTRONG: So what?  2 MR. MOLDOFF: So the area of testimony  3 relates to the damage that we claim --  4 MR. ARMSTRONG: Are you instructing the  5 witness not to answer?  6 MR. MOLDOFF: Let me hear the question,  7 and we'll take it from there. But I'm going to limit  8 it, because that's not what the area of testimony --  9 MR. ARMSTRONG: Well, you decide to do  10 what you're going to do, and then we'll deal with it.  11 MR. MOLDOFF: Fine.  12 BY MR. ARMSTRONG:  13 <b>Q Did anyone ever ask Emerald Equipment to</b>  14 <b>join in the Loan Sale and Assignment Agreement that</b>  15 <b>is Exhibit 2 to the Storage Transfer deposition?</b>  16 MR. MOLDOFF: If you understand the  17 question. I object to the form.  18 THE WITNESS: I don't understand the  19 question.  20 BY MR. ARMSTRONG:  21 <b>Q Did anyone --</b>  22 A Emerald is not party to that agreement.  23 <b>Q And did anyone ever ask Emerald to become</b>  24 <b>a party to the agreement?</b></p>



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23 (Pages 86 to 89)

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1 A To that agreement, no. To Emerald's  
2 position with regards to a carve-out to protect its  
3 creditors. I don't know if it's part of or not part  
4 of that document you just showed me.

5 Q Let me show you a letter dated  
6 February 25th, 2004, that is Exhibit 10 to the  
7 Storage Transfer deposition; and a letter dated  
8 February 25th, 2004, that is Exhibit 11 to the  
9 Storage Transfer deposition.

10 Do you recognize those documents?

11 A Yes, sir.

12 Q What are those documents?

13 A They're self-explanatory. I'm not a  
14 lawyer. I told you that several times.

15 But the one, Exhibit 10, says,  
16 "contribution to the Emerald estate"; and 11 says  
17 "carve-out."

18 Q When was the first discussion about a  
19 contribution to the Emerald estate by Storage  
20 Transfer?

21 A When did I want a contribution to Emerald  
22 with regards to --

23 Q I'm asking when the first discussion was.

24 A I couldn't tell you that. I don't really

1 Q Was it --

2 A The time frame? I don't know.

3 Q Was there a discussion regarding a  
4 carve-out to the Emerald estate before the loan  
5 transfer -- Loan Sale and Assignment Agreement was  
6 signed?

7 MR. MOLDOFF: Asked and answered.

8 THE WITNESS: I don't know. I -- I'm  
9 sorry. I don't remember the dates.

10 BY MR. ARMSTRONG:

11 Q When did you first see the two letters  
12 dated February 25th, 2004?

13 MR. MOLDOFF: If you know.

14 THE WITNESS: These letters here were  
15 copied to me in February '04.

16 BY MR. ARMSTRONG:

17 Q Were they --

18 A When I had seen them, I don't remember.

19 Q Okay. Were they written at your  
20 direction?

21 MR. MOLDOFF: If you know.

22 THE WITNESS: At my direction, per se? I  
23 would have to tell you I was protected in the Emerald  
24 estate, because the bottom line is, they didn't have

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1 know. It was sometime involved in whenever the  
2 transaction was taking place.

3 Q What transaction are you referring to?

4 A The purchase of the loan by Storage  
5 Transfer. It was my loan. I was the one that owed  
6 the money to Emerald.

7 Q Okay. Storage Transfer was purchasing --

8 A The loan.

9 Q -- the Emerald loan from MBC.

10 A Yes.

11 Q Was part of that purchase to involve a  
12 carve-out to the Emerald estate?

13 MR. MOLDOFF: Object to the form of the  
14 question. If you know.

15 THE WITNESS: I'm confused with the  
16 question, because we have these two documents here,  
17 and they're self-explanatory. But I don't understand  
18 the question.

19 BY MR. ARMSTRONG:

20 Q Well, when did the question regarding a  
21 carve-out to the Emerald estate come up?

22 MR. MOLDOFF: If you know.

23 THE WITNESS: I don't know.

24 BY MR. ARMSTRONG:

1 to do a carve-out. Just like MBC did not have to  
2 give me time to pay off their loan.

3 If they called the loan, Emerald is gone.  
4 Emerald is in bankruptcy when this was going on. We  
5 were trying to protect the creditors.

6 BY MR. ARMSTRONG:

7 Q Did Emerald pay any money in exchange for  
8 this carve-out?

9 A Why would Emerald pay any money? They  
10 were the debtor.

11 Q What was the -- what was the  
12 consideration for the carve-out?

13 A That Emerald would survive. That their  
14 creditors would hopefully get some money.

15 MR. MOLDOFF: Object to the form of the  
16 question; calls for a legal conclusion.

17 THE WITNESS: I don't know how that  
18 question even gets involved with this. I had nothing  
19 to do with Storage.

20 BY MR. ARMSTRONG:

21 Q You referred to Sea Star's possession of  
22 Emerald's equipment.

23 A Please don't tell me you didn't have it.  
24 Is that where you're going?



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24 (Pages 90 to 93)

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<p>1 <b>Q Let me show you a copy of a note dated</b>  2 <b>May 11th, 2004, that's Exhibit 16 to the Storage</b>  3 <b>Transfer deposition.</b>  4 <b>Have you ever seen that document before?</b>  5 A No, sir.  6 <b>Q Were you aware that -- did you ever</b>  7 <b>become aware that Arthur Davis was instructing Sea</b>  8 <b>Star not to release Emerald equipment?</b>  9 A I'm not aware of this document. Does  10 Arturo work for Sea Star?  11 I don't know who this was sent to. I  12 don't know the person and I don't know --  13 MR. MOLDOFF: If you don't know, just say  14 you don't know.  15 THE WITNESS: I don't know.  16 BY MR. ARMSTRONG:  17 <b>Q Did you ever become aware that Arthur</b>  18 <b>Davis instructed Sea Star not to release Emerald</b>  19 <b>equipment?</b>  20 A At what time frame?  21 <b>Q Let's start with any time frame.</b>  22 A Well, certainly in the instance of when  23 Emerald had the lease, we would not ask Sea Star to  24 release equipment to a third party without giving you</p>	<p>1 identification.)  2 BY MR. ARMSTRONG:  3 <b>Q Have you ever seen that letter before?</b>  4 A Yes, I saw it.  5 <b>Q Do you recall when you first saw it?</b>  6 A When it was brought up to me.  7 <b>Q Was it your understanding that Sea Star</b>  8 <b>was not storing any Emerald equipment at the time</b>  9 <b>that letter was sent?</b>  10 MR. MOLDOFF: Object to the form of the  11 question.  12 THE WITNESS: I don't know. They should  13 not have been.  14 This looks like a piece of equipment they  15 had in their possession if it's under the lease  16 agreement between Sea Star and Emerald. Evidently  17 you found some equipment you wanted to return several  18 months later, of the termination.  19 BY MR. ARMSTRONG:  20 <b>Q Let me show you a copy of Exhibit 17 to</b>  21 <b>the Storage Transfer deposition.</b>  22 <b>Have you ever seen that document before?</b>  23 A No, I have never seen it.  24 MR. ARMSTRONG: Let me show you a copy of</p>
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<p>1 specific authority.  2 As to what Storage Transfer and Emerald  3 were doing here, I don't know. I never saw this.  4 <b>Q Was Arthur Davis representing Emerald in</b>  5 <b>May 2004?</b>  6 MR. MOLDOFF: If you know.  7 THE WITNESS: I can't tell you if I know  8 or don't know.  9 In May of '04, Storage Transfer owned the  10 loan and Emerald had the lease. Emerald did not tell  11 Arthur to write that email.  12 BY MR. ARMSTRONG:  13 <b>Q Did you ever become aware that equipment</b>  14 <b>was being stored at Sea Star's terminal in San Juan</b>  15 <b>during 2004?</b>  16 A I don't know. This is a period after the  17 time that you were to have returned all of Emerald's  18 equipment. So I don't know anything about these  19 documents -- or that document. If you're reading  20 something else, let me see it.  21 MR. ARMSTRONG: I'll show you a copy of a  22 letter dated June 29th, 2004, that I'll ask the court  23 reporter to mark as Exhibit 6 for identification.  24 (E.E.L. Exhibit 6 was marked for</p>	<p>1 a document that I'll ask the court reporter to mark  2 as Exhibit 7 to this deposition.  3 (E.E.L. Exhibit 7 was marked for  4 identification.)  5 BY MR. ARMSTRONG:  6 <b>Q Have you ever seen that document before?</b>  7 A No, sir, I never saw it.  8 <b>Q Let me show you a copy of Exhibit 21 to</b>  9 <b>the Storage Transfer deposition. Have you seen that</b>  10 <b>document before?</b>  11 A It's a lot of equipment. No, I never saw  12 it before.  13 <b>Q Did you ever become aware of an inventory</b>  14 <b>of equipment at Vega Alta in December 2004?</b>  15 A I'm not specifically aware of that. I  16 know that people were down there on behalf of Emerald  17 trying to find their equipment. If that was an  18 inventory taken, I'll accept you saying it.  19 We had people all over the place trying  20 to --  21 <b>Q Do you know what Vega Alta is?</b>  22 A It's a town somewhere in Puerto Rico, to  23 my knowledge.  24 <b>Q Do you know whether Emerald had a storage</b></p>

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25 (Pages 94 to 97)

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1 facility at Vega Alta?

2 A I have no clue. You'd have to ask Art  
3 Davis.

4 Q Art Davis would not have asked you before  
5 entering into agreement for a storage facility at  
6 Vega Alta?

7 MR. MOLDOFF: Object to the form of the  
8 question.

9 THE WITNESS: I don't know if he would  
10 have asked me. If he had said, Gee, I need a storage  
11 yard, I would have said yes.

12 I don't even know where that place is.  
13 Is it on the island?

14 BY MR. ARMSTRONG:

15 Q It's in Puerto Rico.

16 A Good. I just learned something.

17 Q You never became aware of any storage  
18 yard for Emerald equipment at Vega Alta?

19 A I knew there were storage yards. Where?  
20 I don't know. How many? I would tell you no more  
21 than two, because I probably would not have wanted to  
22 go for the expense.

23 Q Do you know whether Emerald has made  
24 claims against Sea Star for stipulated loss values of

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1 Q You would invoice for equipment that was  
2 in your storage yard and claim a stipulated loss  
3 value; is that correct?

4 MR. MOLDOFF: Object to the form of the  
5 question. Answer if you know.

6 THE WITNESS: Yeah, I answered it.

7 MR. MOLDOFF: Asked and answered.

8 THE WITNESS: Asked and answered.

9 If you had not terminated the agreement  
10 the way it was supposed to be, we have no clue what  
11 equipment is anywhere in your possession. For all we  
12 know, you might have entered the terminal one night  
13 and threw it out in the street.

14 MR. MOLDOFF: And as Mr. Armstrong knows,  
15 in areas where -- or instances where equipment was  
16 later located, it was not returned by Sea Star,  
17 stipulated loss values were charged but they were  
18 adjusted.

19 MR. ARMSTRONG: Are you making an  
20 argument at this point, Counsel? Or are you  
21 answering a question?

22 MR. MOLDOFF: It's a statement, and  
23 you're well aware of it.

24 THE WITNESS: That's a statement of fact.

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1 equipment that was in the Vega Alta storage yard?

2 A I do not know that.

3 MR. MOLDOFF: If you know.

4 THE WITNESS: If it was under lease to  
5 you, a claim would have been made wherever it was.

6 BY MR. ARMSTRONG:

7 Q Even if it was in an Emerald storage  
8 yard?

9 A Even if it was under my Christmas tree,  
10 if it was in your possession, we still would have  
11 invoiced you.

12 Q And would you have invoiced for a  
13 stipulated loss value if it was under your Christmas  
14 tree?

15 A If it was in your possession and never  
16 returned to us, you would be invoiced.

17 Q If it was in your storage yard, would it  
18 have been returned to you?

19 A I don't know how it got to that storage  
20 yard. I would have to document it. And this is what  
21 you and I are talking about: We would have to follow  
22 the flow of the documentation.

23 If you did not have it terminated under  
24 your agreement with Emerald, we would invoice you.

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1 BY MR. ARMSTRONG:

2 Q Let me show you a copy of a document  
3 entitled Order Approving the Stipulation Between Sea  
4 Star Line and the Debtor Regarding Disposition of  
5 Certain Equipment.

6 Are you aware of that order?

7 A I don't understand what this says. Who  
8 entered into this? MBC and Sea Star?

9 Q It looks like Emerald and Sea Star, sir.

10 A Hold on. I'll refer to my counsel,  
11 because I don't understand it.

12 Q All I'm asking you is, are you aware of  
13 that order?

14 MR. MOLDOFF: If you recall.

15 THE WITNESS: I don't know what it is.  
16 Is it a sale of Emerald's equipment to Sea Star? If  
17 that's what it is, I was aware that you bought  
18 equipment. But what's this mean? I don't understand  
19 it.

20 BY MR. ARMSTRONG:

21 Q I'm showing you a document.

22 A I never saw it before.

23 Q Are you aware of that document?

24 A I never saw it before. I don't know what

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26 (Pages 98 to 101)

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<p>1 it is. You'll have to tell me what it means. Then  2 it could refresh my memory.  3 <b>Q You've never seen it before?</b>  4 A To my knowledge, I have not.  5 MR. ARMSTRONG: All right. Can I ask  6 that this be marked as 8.  7 (E.E.L. Exhibit 8 was marked for  8 identification.)  9 BY MR. ARMSTRONG:  10 <b>Q As part of your damage claim --</b>  11 A I'm not done reading it, so give me a  12 minute here.  13 MR. MOLDOFF: For the record, it was a  14 settlement of an issue that arose regarding equipment  15 that was remaining in court or going -- there was a  16 continuing dispute. But it was a settlement that was  17 approved by the bankruptcy court with respect to the  18 disposition of that equipment pursuant to the  19 stipulation.  20 THE WITNESS: Then it is what it is.  21 MR. MOLDOFF: And the document speaks for  22 itself.  23 BY MR. ARMSTRONG:  24 <b>Q Does part of your damage claim relate to</b></p>	<p>1 MR. MOLDOFF: Are you saying --  2 BY MR. ARMSTRONG:  3 <b>Q Does part of your claim relating to</b>  4 <b>Emerald equipment cover equipment that was located in</b>  5 <b>the Dominican Republic on or before April 27th,</b>  6 <b>2002?</b>  7 MR. MOLDOFF: Do you mean if it was  8 thereafter used by Sea Star? I object to the form of  9 the question.  10 THE WITNESS: Well, let's first  11 establish, when did you buy the company?  12 BY MR. ARMSTRONG:  13 <b>Q I think we went through that a couple of</b>  14 <b>hours ago.</b>  15 A We went through a lot.  16 <b>Q The document -- the order was entered on</b>  17 <b>April 27th -- I'm sorry -- April 26th, and the</b>  18 <b>closing occurred by the transfer of funds on</b>  19 <b>April 27th.</b>  20 A So April 29th, you had possession of  21 the Emerald equipment.  22 <b>Q That's a comment by you.</b>  23 A Yes.  24 <b>Q Now, I'm asking you --</b></p>
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<p>1 <b>equipment that was located in the Dominican Republic</b>  2 <b>on April 27th, 2002?</b>  3 A Sitting here, I can't tell you without  4 going into all the documents.  5 We -- you're now talking about equipment  6 you never returned? Is that what you're suggesting?  7 <b>Q I'm not suggesting anything. I'm --</b>  8 A What's your question then?  9 <b>Q I'm asking you a question.</b>  10 <b>Does part of your damage claim --</b>  11 A Right.  12 <b>Q -- that is, Emerald's damage claim --</b>  13 A Right.  14 <b>Q -- relate to equipment that was in the</b>  15 <b>Dominican Republic on April 27th?</b>  16 MR. MOLDOFF: In other words, the  17 question relates to either rental payments and/or --  18 THE WITNESS: Prior to April --  19 MR. MOLDOFF: -- stipulated loss value.  20 I object to the question.  21 BY MR. ARMSTRONG:  22 <b>Q On or before April 27th, 2002.</b>  23 A We would not invoice you on or before  24 April 27th, '02.</p>	<p>1 A It's a fact.  2 <b>Q -- a question.</b>  3 A You took over Emerald's equipment as of  4 the closing. You either would return it within two  5 weeks after the closing or you were using it. If you  6 returned it, you would not be charged.  7 <b>Q Does part of Emerald's claim relate to</b>  8 <b>equipment that was located in the Dominican Republic</b>  9 <b>on or before April 27th, 2002?</b>  10 MR. MOLDOFF: Object to the form of the  11 question.  12 THE WITNESS: April 29th or 27th?  13 BY MR. ARMSTRONG:  14 <b>Q April 27th.</b>  15 A And that's prior to you buying the  16 company.  17 <b>Q April 27th, 2002.</b>  18 MR. MOLDOFF: Object to the form of the  19 question.  20 THE WITNESS: It is, so -- I don't  21 understand the question. I leave it at that.  22 BY MR. ARMSTRONG:  23 <b>Q You don't understand what Emerald's claim</b>  24 <b>is with respect to equipment located in the Dominican</b></p>

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27 (Pages 102 to 105)

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<p>1 <b>Republic?</b></p> <p>2 MR. MOLDOFF: Mr. Armstrong, as you are</p> <p>3 well aware, if Sea Star used the equipment, it is</p> <p>4 listed on the invoices.</p> <p>5 MR. ARMSTRONG: Counselor, you're abusing</p> <p>6 your privilege in this deposition --</p> <p>7 MR. MOLDOFF: I'm not abusing my</p> <p>8 privilege.</p> <p>9 MR. ARMSTRONG: -- and I shall take --</p> <p>10 MR. MOLDOFF: That's fine.</p> <p>11 MR. ARMSTRONG: -- measures under the</p> <p>12 rules.</p> <p>13 MR. MOLDOFF: That's fine.</p> <p>14 MR. ARMSTRONG: You are not entitled to</p> <p>15 sit there and argue --</p> <p>16 MR. MOLDOFF: The witness does not</p> <p>17 understand the question. I'm trying to make it</p> <p>18 understandable for him.</p> <p>19 MR. ARMSTRONG: Well, then I'll try to</p> <p>20 make it understandable.</p> <p>21 MR. MOLDOFF: Okay. Well, give it</p> <p>22 another shot.</p> <p>23 BY MR. ARMSTRONG:</p> <p>24 <b>Q Do you know what your claim is -- that</b></p>	<p>1 <b>Republic after April 27th, 2002?</b></p> <p>2 A After; not before.</p> <p>3 <b>Q Did you communicate, after April 27th,</b></p> <p>4 <b>2002, with Teddy Heinsen regarding equipment in the</b></p> <p>5 <b>Dominican Republic?</b></p> <p>6 A I did not personally. Arthur and</p> <p>7 Lorraine had extensive conversation with Teddy after</p> <p>8 the sale of NPR to Sea Star and the possession taken</p> <p>9 of Sea Star of Emerald's equipment.</p> <p>10 <b>Q And did Lorraine and Arthur report to you</b></p> <p>11 <b>regarding their extensive conversations with Teddy</b></p> <p>12 <b>Heinsen?</b></p> <p>13 A They kept me advised.</p> <p>14 <b>Q And what did Lorraine and Arthur tell</b></p> <p>15 <b>you?</b></p> <p>16 A They told me that there was a lot of</p> <p>17 equipment down there; that Teddy felt he should have</p> <p>18 been paid by NPR, who was liquidated; that he should</p> <p>19 have been paid by Emerald, who was liquidated; but</p> <p>20 who Sea Star was taking possession of the equipment</p> <p>21 to use for their benefit.</p> <p>22 And our position was, take that up with</p> <p>23 Sea Star.</p> <p>24 <b>Q And did Teddy Heinsen tell you that he</b></p>
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<p>1 <b>is, what Emerald's claim is -- with respect to</b></p> <p>2 <b>equipment in the Dominican Republic?</b></p> <p>3 A I know my claim. Whether it's in the</p> <p>4 Dominican Republic or wherever else the equipment was</p> <p>5 used by Sea Star is my claim. And the records speak</p> <p>6 for themselves.</p> <p>7 <b>Q What do you know about your claim with</b></p> <p>8 <b>respect to equipment in the Dominican Republic?</b></p> <p>9 MR. MOLDOFF: Object to the form of the</p> <p>10 question.</p> <p>11 THE WITNESS: I don't even know if there</p> <p>12 was equipment then on the 27th of April. I'm just</p> <p>13 trying to tell you that, if there was and if it was</p> <p>14 in your possession, you would have been invoiced for</p> <p>15 it.</p> <p>16 Now, can you tell me if you had equipment</p> <p>17 then?</p> <p>18 BY MR. ARMSTRONG:</p> <p>19 <b>Q Do you know Teddy Heinsen?</b></p> <p>20 A Then you know as much as I do about this</p> <p>21 question you're asking.</p> <p>22 I know Teddy Heinsen.</p> <p>23 <b>Q Did you have any communications with</b></p> <p>24 <b>Teddy Heinsen regarding equipment in the Dominican</b></p>	<p>1 <b>was -- or tell Lorraine and Arthur that he had a lien</b></p> <p>2 <b>on the Emerald equipment?</b></p> <p>3 A Teddy Heinsen never talked to me. He</p> <p>4 talked to Lorraine and Arthur. And there were</p> <p>5 several other people involved in it, including some</p> <p>6 Sea Star people.</p> <p>7 It was all resolved, to my knowledge.</p> <p>8 That's about the best I can help you with regards to</p> <p>9 Teddy Heinsen.</p> <p>10 <b>Q Were you aware of any meetings involving</b></p> <p>11 <b>Arthur Davis and Martin McDonald in the Dominican</b></p> <p>12 <b>Republic with Teddy Heinsen?</b></p> <p>13 A Marty McDonald could have been there. I</p> <p>14 don't think Arthur ever went there, to my knowledge.</p> <p>15 He might have.</p> <p>16 No, I'm not aware of any. But it could</p> <p>17 have happened in the normal course of business.</p> <p>18 <b>Q Do you know whether Arthur Davis and</b></p> <p>19 <b>Marty McDonald went to the Dominican Republic in an</b></p> <p>20 <b>attempt to retrieve equipment from Teddy Heinsen --</b></p> <p>21 <b>that is, Emerald equipment?</b></p> <p>22 A I do believe I just answered that</p> <p>23 question: I'm not aware of them going there.</p> <p>24 Would they have gone there? The normal</p>

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1 course of business to retrieve equipment that was in  
2 the possession of Sea Star, they would have went  
3 there. If it was in the possession of Teddy Heinsen  
4 on behalf of Emerald, they would have went there.

5 I do know that Mr. Heinsen purchased a  
6 lot of equipment from Emerald.

7 **Q Do you know when Mr. Heinsen purchased**  
8 **that equipment from Emerald?**

9 A Throughout the course of a couple of  
10 years.

11 MR. ARMSTRONG: Let me show you a copy of  
12 a document entitled Notice of Maritime Liens Asserted  
13 by E. T. Heinsen C Por A and Naves Y Terminales, S.A.  
14 and I'll ask the court reporter to mark as Exhibit 9  
15 for identification.

16 (E.E.L. Exhibit 9 was marked for  
17 identification.)

18 THE WITNESS: Counsel, what's this have  
19 to do with why I'm here today?

20 BY MR. ARMSTRONG:

21 **Q Have you ever seen that document before?**

22 MR. MOLDOFF: You can answer the question  
23 if you can.

24 THE WITNESS: I've never seen this

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1 document. I don't even know what it is. Is it a  
2 claim for stevedoring? A claim for  
3 stevedoring-related services.

4 MR. MOLDOFF: Just answer the question.

5 THE WITNESS: I never saw the document.

6 BY MR. ARMSTRONG:

7 **Q Did you ever become aware that Heinsen**  
8 **was claiming maritime liens on Emerald equipment as**  
9 **of April 25th, 2002?**

10 A I answered that before: Yes, I knew that  
11 he was attempting to hold Emerald equipment under a  
12 lien. What equipment, I don't know what it was, but  
13 it had been resolved.

14 **Q Do you know when it was resolved?**

15 A I would think within weeks of when they  
16 claimed it.

17 **Q Do you know how it was resolved?**

18 A The attorneys resolved it. I don't know,  
19 here sitting today. We'd have to go get the record.  
20 Whatever it is, it is.

21 Are you suggesting that Emerald had  
22 equipment in Santo Domingo, and then turned around  
23 and invoiced you for lost equipment? Are you going  
24 to say that? Is that what you're saying?

1 **Q Did you participate in any resolution of**  
2 **a Heinsen maritime lien claim?**

3 A I didn't get an answer to my question.

4 We're talking here about equipment that you're making  
5 an allegation to. I want to know if you know that as  
6 fact.

7 **Q Did you participate --**

8 MR. MOLDOFF: He doesn't have to answer  
9 your question.

10 BY MR. ARMSTRONG:

11 **Q -- in any resolution of the Heinsen**  
12 **maritime lien claim?**

13 A I participated between Lorraine and  
14 Arthur Davis. I did not get involved with the  
15 lawyers. I did not get involved with Teddy Heinsen.

16 **Q Did Arthur Davis report to you that the**  
17 **maritime lien claim asserted by E. T. Heinsen had**  
18 **been resolved?**

19 A What I can remember, the issue between  
20 Heinsen and this document was resolved. How, I don't  
21 know.

22 **Q Do you know when it was resolved?**

23 A I thought within a matter of weeks of it.

24 **Q How did you gain that information?**

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1 A My recollection is I was told that by  
2 Arthur or Lorraine. Whether it was or wasn't, I  
3 don't know. The record will speak for itself.

4 MR. MOLDOFF: Let's take a break,  
5 two-minute break.

6 MR. ARMSTRONG: That's fine, because I'm  
7 almost finished.

8 MR. MOLDOFF: Okay.

9 (Brief recess.)

10 BY MR. ARMSTRONG:

11 **Q Mr. Holt, have you ever participated in**  
12 **the preparation of the spreadsheet invoices sent to**  
13 **Sea Star?**

14 A Physically participate, no.

15 **Q Have you participated in any way?**

16 A The overview and review.

17 **Q Did you review those invoices?**

18 A I did.

19 **Q If Sea Star responded, did you review**  
20 **responses?**

21 A I probably did.

22 MR. MOLDOFF: Objection to the form of  
23 the question.

24 BY MR. ARMSTRONG:

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**Q Have you reviewed the backup documents for the spreadsheet invoices?**

A Physically, no. No. I just took the position of Arthur and Lorraine that, after review of all this, it shows that Sea Star used the equipment more than what they were paying for.

**Q Have you reviewed any of the backup documents submitted with any Sea Star responses?**

MR. MOLDOFF: Object to form. What responses are you referring to?

MR. ARMSTRONG: Responses to the spreadsheet invoices.

THE WITNESS: I have reviewed some of their answers, yes.

MR. MOLDOFF: During the -- are you referring to the response -- just so that we're clear, are you referring to the responses to the arbitration that you said would not be admissible in evidence?

MR. ARMSTRONG: No.

MR. MOLDOFF: What responses are you referring to?

MR. ARMSTRONG: I'm referring to responses outside of that, which, as you know, have

A Okay?

**Q When do you last recollect seeing Emerald spreadsheet invoices?**

A Probably an ongoing time frame up through '06. Maybe a little bit in '07. But that doesn't mean I didn't see them, but I don't remember them. That's the best way to say it to you.

**Q Do you know whether those spreadsheet invoices are part of Emerald's Amended Counterclaim?**

MR. MOLDOFF: If you know.

THE WITNESS: I don't know. They should be, but I don't know. If they were amended, they should be part of the amendments, because we gave adjustments numerous, numerous times.

BY MR. ARMSTRONG:

**Q And do you know when the Amended Counterclaim was filed?**

A No.

MR. ARMSTRONG: Let me ask the court reporter to mark these invoices as composite Exhibit 10 for identification.

(E.E.L. Exhibit 10 was marked for identification.)

BY MR. ARMSTRONG:

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gone on for several years.

MR. MOLDOFF: Well, I don't know that.

But --

BY MR. ARMSTRONG:

**Q Let me show you -- let's see -- copies of spreadsheet invoices for 20-foot chassis and 40-foot chassis. And I'll tell you that I'm just showing you the first and last page of each of these invoices. They show as having been amended in August 2007.**

**Have you seen those documents before?**

A No, I haven't seen this document.

Was the amendment a plus or minus for Sea Star?

**Q Usually the amendments are minuses for Sea Star.**

A You're saying in '07 --

**Q I'm just asking, have you seen those documents?**

A Not these documents specifically.

MR. MOLDOFF: If you recall.

THE WITNESS: I don't recall. But the reason you said '07 is -- I don't believe I saw them.

BY MR. ARMSTRONG:

**Q Okay.**

**Q Let me show you two other spreadsheet invoices amended 5/1/06, together with an email from Lorraine Robins dated October 26, 2007.**

**Have you seen any of those documents? I'll ask the court reporter to mark them as Exhibit 11 for identification.**

(E.E.L. Exhibit 11 was marked for identification.)

THE WITNESS: I did not see this document. And what month is this for?

BY MR. ARMSTRONG:

**Q At the top, the indication is that --**

A Is this a correction? Okay.

No, I have not seen this document. When was it forwarded? '07? Yeah, '07.

**Q In October 2007, was Lorraine Robins working for Emerald?**

A She was working for her company, but on behalf also of Emerald, the lessor of the equipment to Sea Star.

You got a lot of corrections there.

**Q Now, you see that email, October 26th, 2007. You see the invoice, spreadsheets attached to that email amended May 1st, 2006, according to the**

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1 **invoices.**

2 A I didn't read each line, but okay.

3 Q Well, you look at the top line --

4 A Top line of the amended invoice?

5 Q Right.

6 A Amended 5/1/06. Okay.

7 Q And look at the other amended invoice.

8 A Same thing.

9 Q Amended 5/1/06.

10 A And then there's one here amended  
11 12/1/05.

12 Q Now, which set of invoices -- those that  
13 I've shown you that are Exhibit 10 or those that you  
14 have in your hand that are Exhibit 11 -- applies to  
15 the Amended Counterclaim?

16 A My presumption is they all do. These  
17 amendments, as dated, are solely based on facts that  
18 were garnished through discovery from you or other  
19 information that come in for them.

20 We have stuff that goes -- here's one for  
21 March 14th, '03. Here's one for October '02. This  
22 is the information we're getting from your records.

23 Q Sir, Ms. Robins sends an email  
24 October 26th, 2007.

1 looking at it here and saying, Why was it amended?

2 And then I look at the explanation: "Not  
3 on self-billing report," is the predominant reason  
4 why they were amended. For all I know she never got  
5 around to doing a stack of self-billing reports.

6 Q All right, sir.

7 A I have no clue. But the fact is that it  
8 shows that you owed money.

9 Q Showing you Exhibit 10, which says,  
10 amended 8/28/07, on both sets --

11 A Okay.

12 Q -- and Exhibit 11 --

13 A Okay.

14 Q -- which are the more current amended  
15 invoices?

16 MR. MOLDOFF: If you know.

17 THE WITNESS: Well, I don't know. But  
18 you can read them and figure out which they are.

19 They're separate. They're not one and  
20 the same, if that's your question. There's separate  
21 numbers, separate equipment numbers, separate dates.  
22 They're separate.

23 This is not -- are you saying this is a  
24 duplication? I don't think so, sir.

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1 A Right.

2 Q She attaches invoices; and I'm showing  
3 you two of the categories, first and last page, as I  
4 told you.

5 A Yes, sir.

6 Q We see that those invoices indicate, at  
7 the top, that they were amended May 1st, 2006;  
8 correct?

9 MR. MOLDOFF: I object to the form of the  
10 question. That's what the document says. It doesn't  
11 say that that's when the amendments were actually  
12 made.

13 BY MR. ARMSTRONG:

14 Q Well, Counsel has raised a good point.

15 Can you tell when the amendments were  
16 actually made?

17 A No.

18 MR. MOLDOFF: If you know.

19 BY MR. ARMSTRONG:

20 Q Do you know whether there are amendments  
21 on those invoices that were made after May 1st,  
22 2006?

23 A I can't tell you that. The document  
24 speaks for itself. I'm looking at it here -- I'm

1 BY MR. ARMSTRONG:

2 Q Is your answer that you don't know which  
3 of these is the current invoice for the 20-foot  
4 chassis and the 40-foot chassis?

5 A My answer is, that is purported to be an  
6 amended invoice, pure, plain and simple, for whatever  
7 it may be -- both of them.

8 MR. MOLDOFF: And Counsel, if there are  
9 any questions regarding what the invoice is, which  
10 you should be responding to in discovery, all you  
11 have to do is pick up the phone and ask me, if  
12 there's any question about that.

13 MR. ARMSTRONG: Yes, Counsel; I certainly  
14 shall do that.

15 BY MR. ARMSTRONG:

16 Q Do you know whether this 8/28/07 invoice  
17 has been amended after 8/28/07?

18 A I don't know.

19 You asked me is it part of the  
20 Counterclaim. I don't know. I assume it is. You  
21 would know better than me.

22 I sure hope it's part of our claim. I  
23 wouldn't want to leave several hundred thousand  
24 dollars on the table.

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1 MR. ARMSTRONG: I have nothing further.  
2 Thank you.  
3 (Deposition concluded 1:00 p.m.)

4 CERTIFICATION

5  
6  
7 I hereby certify that I have read the  
8 foregoing transcript of my deposition testimony, and  
9 that my answers to the questions propounded, with the  
10 attached corrections or changes, if any, are true and  
11 correct.  
12

13 -----  
14 THOMAS HOLT, SR.  
15  
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1 CERTIFICATE OF SHORTHAND REPORTER

2  
3 I, Gail Inghram Verbano, CSR, RMR, CLR,  
4 the officer before whom the foregoing proceedings  
5 were taken, do hereby certify that the foregoing  
6 transcript is a true and correct record of the  
7 proceedings; that said proceedings were taken by me  
8 stenographically and thereafter reduced to  
9 typewriting under my supervision; and that I am  
10 neither counsel for, related to, nor employed by any  
11 of the parties to this case and have no interest,  
12 financial or otherwise, in its outcome.  
13  
14

15 *Gail Inghram Verbano*

16 Gail Inghram Verbano, CSR, RMR, CLR  
17 CSR No. 8635  
18 Certification No.: 220  
19 (Expires 1-31-2011)  
20  
21  
22  
23  
24

